No. 2787

United States

Circuit Court of Appeals

For the Ninth Circuit.

CONSOLIDATED MUTUAL OIL COMPANY, a Corporation, and J. M. McLEOD,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed
SEP 23 1916
F. D. Monckton,
Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index. Page

Index. Page

Names and Addresses of Attorneys.

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For Appellees, The United States of America:

ALBERT SCHOONOVER, Esq., United States Attorney, Los Angeles, California;

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*Page-number appearing at foot of page of original certified Record.

In the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

No. ——.

UNITED STATES OF AMERICA,
Plaintiff and Appellee,
vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,
Defendants and Appellants.

Citation on Appeal.

United States of America,—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, Ninth Circuit, to be held at San Francisco, California, on the 1st day of April, 1916, being within thirty days from the date hereof pursuant to an order allowing an appeal of record in the clerk's office of the District Court of the United States for the Southern District of California, in the suit numbered A–41—Equity in the records of said court, wherein the United States of America is plaintiff and appellee, and among others, Consolidated Mutual Oil Com-

pany and J. M. McLeod are defendants and appellants, to show cause, if any there be, why the interlocutory decree appointing a receiver, rendered against the said Consolidated Mutual Oil Company and said J. M. McLeod should not be corrected, and why speedy justice should not be done in that behalf. [5]

WITNESS, the Honorable M. T. DOOLING, United States District Judge, this 3d day of March, 1916.

M. T. DOOLING,
Judge. [6]

Due service and receipt of a copy of the within Citation on Appeal this 3d day of March, 1916, is hereby admitted.

E. J. JUSTICE,
Attorney for Plff.
J. W. W.

[Endorsed]: No. A-41. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellee, vs. Record Oil Company et al., Defendants and Appellants. Citation. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [7]

In the District Court of the United States, in and for the Southern District of California, Northern Division.

No. A–41—EQUITY.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants. [8]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM

COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Bill of Complaint.

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of Said District.

The United States of America, by Thomas W. Gregory, its Attorney General, presents this, its bill in equity, against Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, J. M. McLeod, Louis Titus, North American Oil Consolidated, Standard Oil Company, General Petroleum Company, Associated Oil Company and L. B. McMurtry (citizens and residents, respectively, as stated in the next succeeding paragraph of this bill), and for cause of complaint alleges:

I.

Each of the defendants, Record Oil Company, Consolidated Mutual Oil Company, North American Oil Consolidated, [9] Standard Oil Company, General Petroleum Company and Associated Oil Company, now is, and at all the times hereinafter mentioned as to it was a corporation, organized under the laws of the State of California.

The defendant, Mays Consolidated Oil Company, now is, and at all the times hereinafter mentioned as to it was a corporation, organized under the laws of the State of Nevada.

The defendants, J. M. McLeod, Louis Titus and

L. B. McMurtry, now are, and at all the times hereinafter mentioned as to them were residents and citizens of the State of California, as complainant is advised and believes and so alleges.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas lands, to wit:

> The Northeast quarter of Section twenty-eight (28), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. M.

and of the oil, petroleum, gas, and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior, and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands) from mineral exploration, and from all forms of location or settlement, selection, filing, [10] entry, patent, occupation, or disposal, under the mineral and nonmineral land laws of the United States, and since said last-named date, none of said lands have been subject to exploration for mineral oil, petroleum, or gas, occupation or the institution of any right under the public land laws of the United States.

IV.

Notwithstanding the premises, and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and lawful orders and proclamations of the President of the United States, and particularly in violation of the said order of withdrawal of the 27th of September, 1909, the defendants herein, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, North American Oil Consolidated, J. M. McLeod, and Louis Titus, entered upon the said land hereinbefore particularly described, long subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Said defendants, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, North American Oil Consolidated, J. M. McLeod, and Louis Titus, had not discovered petroleum, gas or other minerals on said land on or before the 27th day of September, 1909, and had acquired no rights on, or with respect to said land, on or prior to said date.

VI.

Long after the said order of withdrawal of September 27, 1909, to wit, some time in the latter part of the year 1910, as plaintiff is informed and believes, there was first [11] produced minerals, to wit, petroleum and gas, on or from said land, and the defendants, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Com-

pany, North American Oil Consolidated, J. M. McLeod, and Louis Titus, have produced and caused to be produced therefrom large quantities of petroleum and gas, but the exact amount so produced plaintiff is unable to state. Of the petroleum and gas so produced large quantities thereof have been sold and delivered by the said defendants, Consolidated Mutual Oil Company, North American Oil Consolidated, J. M. McLeod and Louis Titus, to the Standard Oil Company, General Petroleum Company and Associated Oil Company, and by the said defendant, Record Oil Company to the Standard Oil Company and by the said defendant, Mays Consolidated Oil Company to the Standard Oil Company and the General Petroleum Company, and the said defendants, Record Oil Company, Consolidated Mutual Oil Company, North American Oil Consolidated, Mays Consolidated Oil Company, J. M. McLeod and Louis Titus, have sold and disposed of oil and gas produced from said land to others, to plaintiff unknown. Plaintiff does not know and is therefore unable to state the amount of petroleum and gas which defendants, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, North American Oil Consolidated, J. M. McLeod and Louis Titus, have extracted from said land and sold, nor the amount extracted and now remaining undisposed of; nor the price received for such oil and gas as has been sold, and has no means of ascertaining the facts in the premises, except from said defendants, Record Oil Company, Consolidated Mutual Oil Company, Mays Consoli-

dated Oil Company, North American Oil Consolidated, J. M. McLeod, Louis [12] Titus, Standard Oil Company, General Petroleum Company, and Associated Oil Company, and, therefore, a full discovery from said defendants is sought herein.

VII.

The defendants, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, North American Oil Consolidated, J. M. McLeod and Louis Titus, are now extracting oil and gas from said land, drilling oil and gas wells, and otherwise trespassing upon said land and asserting claims thereto, and if they continue to procure oil and gas therefrom, it will be taken and wrongfully sold and converted, and various other trespasses and waste will be committed upon said land, to the irreparable injury of complainant, and will interfere with the policies of the complainant with respect to the conversation, use and disposition of said land, and particularly the petroleum, oil and gas contained therein.

VIII.

Each of the defendants claims some right, title or interest in said land, or some part thereof, or in the oil, petroleum, or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or through and by purchase thereof, and each of said claims is predicated upon or derived directly or mediately from some pretended notice or notices of mining locations, and by conveyances, contracts or liens directly or mediately from said such pretended locators. But none of such location notices and

claims are valid against complainant, and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately; nor have any minerals [13] been discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud upon the title of the complainant, and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions.

IX.

Neither of the defendants, nor any person or corporation from whom they have derived any alleged interest, was, at the date of said order of withdrawal of September 27, 1909, nor was any other person at such date, a *bona fide* occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas.

X.

The defendants, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, North American Oil Consolidated, J. M. McLeod and Louis Titus, claim said lands under an alleged location notice, which purports to have been posted and filed in the names of Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder and F. H. Searles, and known as the "Ohio" placer mining claim, bearing date January 5, 1909.

XI.

The said location notice was filed and posted by or for the sole benefit of the defendant, J. M. McLeod, or someone else other than the persons whose names were used in said pretended location notice, and the names [14] of the pretended locators above set out, were used to enable J. M. McLeod, or some other person than said persons whose names were so used, to acquire more than twenty acres of mineral land in violation of the laws of the United States. The said persons whose names were so used in said location notice were not *bona fide* locators, and each of them was without an interest in said location notice so filed, and their names were not used to enable them, or either of them, to secure said land or patent therefor; but each of said persons was a mere dummy, used for the purposes alleged, all of which complainant is informed and believes, and so alleges.

XII.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants, to set forth their respective claims of interest.

In that behalf the plaintiff alleges that, because of the premises of this bill, none of the defendants have, or ever had any right, title or interest in or to, or lien upon said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to ex-

tract the petroleum or mineral oil or gas from said land, or to convey or dispose of the petroleum and gas so extracted, or any part thereof; on the contrary, the acts of those defendants who have entered upon said land and drilled oil wells, and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation [15] of the laws of the United States and the aforesaid order withdrawing and reserving said land, and all of said acts were and are in violation of the rights of the plaintiff, and such acts interfere with the execution by complainant of its public policies with respect to said land.

XIII.

The present value of said land hereinbefore described exceeds Two Hundred Thousand Dollars.

In consideration of the premises thus exhibited, and inasmuch as plaintiff is without full and adequate remedy in the premises, save in a court of equity where matters of this nature are properly cognizable and relievable, plaintiff prays:

1. That said defendants, and each of them, may be required to make full, true and direct answer respectively to all and singular the matters and things hereinbefore stated and charged, and to fully disclose and state their claims to said land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived.

2. That the said land may be declared by this

Court to have been at all times from and after the 27th day of September, 1909, lawfully withdrawn from mineral exploration, and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States; and that the said location notice was fraudulently filed, and the said defendants did not acquire any right thereunder; [16]

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or minerals or mineral deposits contained in or under said land, or any part thereof; and that all and singular of said land, together with all of the minerals and mineral deposits, including mineral oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants, and each and every one of them;

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land, or any part thereof, or in or to any of the minerals, or mineral deposits therein, or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said land,

and from in any manner using any of said land and premises, and from in any manner extracting, removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land, or with reference to any of the mineral deposited therein or thereunder, or any of the other natural products thereof; **[17]**

5. That an accounting may be had by said defendants, and each and every one of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted or received by them, or either of them, from said land, or any part thereof, and of any and all moneys or other property or thing of value, received from the sale or disposition of any and all minerals extracted from said land, or any part thereof, and of all rents and profits received under any sale, lease, transfer, conveyance, contract, or agreement concerning said land, or any part thereof; and that plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises;

6. That a receiver may be appointed by this Court to take possession of said land, and of all wells, derricks, drills, pumps, storage vats, pipes, pipe-lines, shops, houses, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are

being used in the extraction, storage, transportation, refining, sale, manufacture, or in any other manner in the production of petroleum or petroleum products or other minerals from said land or any part thereof, for the purpose of continuing, and with full power and authority to continue the operations on said land in the production and sale of petroleum and other minerals when such course is necessary to protect the property of the complainant against injury and waste, and for the preservation, protection and use of the oil **[18]** and gas in said land, and the wells, derricks, pumps, tanks, storage, vats, pipes, pipe-lines, houses, shops, tools, machinery, and appliances being used by the defendants, their officers, agents or assigns, in the production, transportation, manufacture, or sale of petroleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in receivers of courts of chancery.

7. That plaintiff may have such other and further relief as in equity may seem just and proper.

To the end therefore that this plaintiff may obtain the relief to which it is justly entitled in the premises, may it please your Honors to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to said defendants herein, to wit, Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, J. M. McLeod, Louis Titus, North American Oil Consolidated, Standard Oil Company, General Petroleum Company, Associated Oil Company and L. B. McMurtry, therein and

thereby commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear before this Honorable Court, and then and there, severally, full, true and direct answers make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against **[19]** them, or any of them, in the premises, *and* shall be meet and agreeable to equity.

THOMAS W. GREGORY,
Attorney General of the United States.
ALBERT SCHOONOVER,
United States District Attorney.
E. J. JUSTICE,
Special Assistant to the Attorney General.
A. E. CAMPBELL,
Special Assistant to the Attorney General.

[20]

United States of America,
Southern District of California,—ss.

R. W. Dyer, being first duly sworn, deposes and says:

He is now, and has been since the 29th day of April, 1911, a special agent of the General Land Office of the United States, and, since the 20th day of June, 1913, has been engaged in the investigation of facts relating to the lands withdrawn by the President as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2d, 1910. That from such examina-

tion of such lands, and the facts ascertained in relation thereto, and from the examination of the records of the General Land Office, and the local land offices of complainant in said State of California, and the examination of court records and county records, and particularly from affidavits setting forth the facts, he is informed as to the matters and things stated in the foregoing complaint, with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are stated to be on information and belief, and as to those, affiant, after investigation, states he believes them to be true.

R. W. DYER.

Subscribed and sworn to before me this 16th day of October, 1915.

[Seal] T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California. **[21]**

[Endorsed]: No. A–41—Eq. In the District Court of the United States for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company et als., Defendants. Bill of Complaint. Filed Oct. 25, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. **[22]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY et al.,

Defendants.

Answer of Consolidated Mutual Oil Company.

Comes now the Consolidated Mutual Oil Company, one of the defendants named in the above-entitled and numbered suit, and answers the bill of complaint on file therein as follows:

FIRST DEFENCE.

As and for its first defence to the cause of action set forth in said bill of complaint, said defendant moves the Court for an order transferring said suit to the law side and calendar of the above-entitled court for trial and final disposition.

Said motion is made and based upon the ground that upon the allegations of the bill of complaint and from the prayer thereof it appears that said suit is one in ejectment brought by the plaintiff out of possession against the defendants in possession of the lands described in the bill of complaint and for damages for past trespasses **[23]** both subjects of litigation over which a court of equity has no jurisdiction, and upon which the plaintiff has full,

complete, speedy and adequate remedy in a court of law.

Said motion will be made and based upon the pleadings, records and files in the above-entitled and numbered suit.

SECOND DEFENCE.

As and for its second defence to the cause of action set forth in the bill of complaint on file in the above-entitled and numbered suit, this defendant moves the Court for an order striking out of said complaint the portions thereof following:

1. That portion of Paragraph VI beginning with the words "Plaintiff does not know" and ending with the words "is sought herein."

2. All of Paragraph VII.

3. That part of Paragraph VIII which reads as follows: "and wrongfully interfered with its operation and disposition of said land to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions."

4. That part of Paragraph XII following: "and such acts interfere with the execution by complainant of its public policies with respect to said lands."

5. All of Paragraph XIII.

6. That portion of the bill of complaint following Paragraph XIII which reads: "and inasmuch as **[24]** complainant is without full and adequate remedy in the premises, save in a court of equity where matters of this nature are properly cognizable and relievable."

7. All of Paragraphs 4, 5 and 6 of the prayer of said bill of complaint.

Said motion will be made and based upon the ground that the portions of the bill of complaint above specified are and constitute scandalous and impertinent matter inserted in the bill of complaint and are redundant and surplusage.

Said motion will be made and based upon the pleadings, records and files in the above-entitled and numbered suit.

THIRD DEFENCE.

As and for its third defence to the cause of action set forth in the bill of complaint on file in the above-entitled and numbered suit, the defendant, Consolidated Mutual Oil Company, alleges that the above-entitled Court, sitting as a court of equity, has no jurisdiction of the subject matter of said suit for that the allegations of the bill of complaint show that the main case made thereby and the chief object and purpose of the suit is to try the question of title to the land as between the plaintiff out of possession and the defendants in possession of the land described in the bill of complaint; to secure possession thereof from the defendants; and a judgment for damages for alleged trespasses, all subjects without the jurisdiction of the court of equity and upon which plaintiff has full, adequate, speedy and [25] complete remedy and relief in a court of law.

FOURTH DEFENCE.

As and for its fourth defence to the cause of action set forth in the bill of complaint on file in the

above-entitled and numbered suit, said defendant, Consolidated Mutual Oil Company, alleges:

That on January 1, 1909, the land described in said bill of complaint was public mineral land of the United States subject to location and purchase under the laws of the United States relating to the sale and disposition of lands commonly known as placers, and on said date the eight persons named as locators in Paragraph X of said bill of complaint, each being then a citizen of the United States, and all having theretofore associated themselves together for the purpose of acquiring title to oil lands in the County of Kern, State of California, duly located said land as the Ohio Placer Mining Claim and recorded notice of location thereof on January 5, 1909, in Book 77 of Mining Records, at page 1, records of Kern County, California.

Thereafter and on June 17, 1909, the said locators conveyed all of their right, title and interest in and to said land to J. M. McLeod, one of the defendants in the above-entitled action; that ever since said date said J. M. McLeod has claimed to be the owner of said land openly and notoriously and during said time has held said land and caused the same to be worked and developed for its minerals.

That on June 18, 1914, said J. M. McLeod made mineral entry of said land and other land in the United **[26]** States Land Office at Visalia, California, its Serial No. 04655, for the whole of the land described in said bill of complaint, under and pursuant to the provisions of Section 2332 of the Revised Statutes of the United States and Rules 74 to

77 inclusive, of the regulations promulgated by the Secretary of the Interior under and pursuant to the provisions of said section of the Revised Statutes of the United States; that notice of said mineral entry was given by said J. M. McLeod in all respects as required by law and the rules and regulations of the Department of the Interior, and on September 19, 1914, said J. M. McLeod having theretofore complied in every respect with the laws of the United States relating to the sale and disposition of its mineral lands commonly called placers, and with all of the rules and regulations promulgated thereunder by the Department of the Interior, paid to the United States, the plaintiff in this suit, and said plaintiff accepted without objection or protest of any kind, the sum of $2.50 per acre for said land, or a total of $400 therefor, and the receiver of the United States Land Office at Visalia issued his final receipt therefor No. 1,493,022 on said last-mentioned date.

That at the time of the making of said mineral entry a copy of the notice thereof and of the affidavit as to expenditures and improvements upon said land was furnished by said McLeod to the Chief of Field Division for the Visalia Land District.

That on October 31, 1914, the Register of the United States Land Office at Visalia, California, issued a final certificate of entry, certifying therein and thereby that said J. M. McLeod was entitled to have issued to him a United States Patent for the lands described in **[27]** said bill of complaint, and other lands described in said certificate of entry.

That by reason of the foregoing facts set forth in this defence said J. M. McLeod became and was, on October 31, 1914, long before the filing of the bill of complaint in this action, the owner of the land described in said bill of complaint and of the whole thereof, and the plaintiff in this suit was and is estopped and precluded from at any time after October 31, 1914, questioning the title of said J. M. McLeod to said land or any part thereof or to the minerals therein contained or extracted therefrom at any time prior to the date of the filing of said bill of complaint.

That this defendant, Consolidated Mutual Oil Company, claims and owns and has an interest in the land described in said bill of complaint as lessee thereof, by virtue of leases in writing and duly recorded in the office of the recorder of Kern County, California, executed and delivered by said J. M. McLeod and others claiming by, through and under him.

FIFTH DEFENCE.

As and for a fifth defence to the bill of complaint on file in the above-entitled action, this defendant alleges:

That in the development of the land described in said bill of complaint there has been expended many thousands of dollars and the said development work has extended over and been carried on diligently during a period of more than five years last past, all in strict conformity with the rules, regulations, customs and [28] interpretations of the mining laws of the United States that have been in exist-

ence and acquiesced in by the plaintiff herein and its Congress and the Department of the Interior for more than forty years prior to the filing of the complaint herein; that said work of development was also in conformity with the policy of said plaintiff, that had been well settled and acted upon for a like period of time; that the large amount of money and time aforesaid was expended in good faith and for the purpose of honestly acquiring title to said land and also upon the faith of said long existent rules, customs, regulations and policies and upon the belief that plaintiff would not suddenly, as it now has, by the filing of this suit, reverse the same, to the irreparable injury of this defendant, its predecessors in interest and said J. M. McLeod and those claiming by, through and under him.

That the doing of said work of development and the expenditure of time and money in connection therewith was at all times with the full knowledge of this plaintiff by and through examinations of said land and of the things being done thereon made at various times by the agents of the Department of the Interior and reports thereof by said *against to* said department, but notwithstanding such knowledge this plaintiff made no objection whatever at any time prior to the filing of said bill of complaint to the claim of title to said land by said J. M. McLeod and those claiming by, through and under him, or to the possession, occupation and working thereof by said persons, until the filing of said bill of complaint, and on account of such failure on the part of this plaintiff make objections [29] as aforesaid, said J. M.

McLeod and those claiming by, through and under him, including this defendant, were warranted in believing and did believe that the plaintiff did not and would not object to the use and occupation of said land or the claim of title thereto aforesaid, or the extraction and use of minerals therefrom and said expenditures of money and time were made in full reliance upon such belief.

That by reason of the matters and things in this defence alleged, this defendant alleges, asserts and insists that the plaintiff is estopped from now claiming that it is entitled to the possession of said land or any part thereof, or of the mineral therein, or which has been produced therefrom or any part thereof, and that said plaintiff is guilty of laches in the institution of this suit and in objection to the rights and title of this defendant, said J. M. McLeod, or of any person claiming by, through or under him, and ought not now in all equity and good conscience to be heard to assert any claim or right to dispossess this defendant or any of the other defendants claiming an interest in said land or to assert any claim of right or title to any part of the minerals therein or heretofore extracted therefrom.

SIXTH DEFENCE.

Without waiving but, on the contrary, expressly reserving the full benefit of each of the defences heretofore set forth, this defendant, the Consolidated Mutual Oil Company, as and for its sixth defence to the cause of action set forth in the bill of complaint on file in the above-entitled suit, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraph I of said [30] bill of complaint.

II.

Denies that the plaintiff, at any of the times mentioned in Paragraph II of said bill of complaint, has been or now is the owner or entitled to the possession of the land described in said Paragraph II, or of any part thereof, or of the oil, petroleum, gas or any other minerals contained in said land, except subject to the right, title and interest therein of this defendant and of its codefendants Mays Consolidated Oil Company and J. M. McLeod.

On the contrary this defendant alleges that at the time of the filing of said bill of complaint and for a long time prior thereto this defendant was in the possession of said lands and rightfully entitled to hold possession thereof and to extract and dispose of the minerals therein contained for its own use and benefit by virtue of compliance and in good faith by its predecessors in interest with the laws of the United States relating to the sale and disposition of its mineral lands and by virtue of the Act of Congress of June 25, 1910 (36 Stats. at L. 847).

III.

Admits that on September 27, 1909, the President of the United States, acting by and through the Secretary of the Interior, issued an order temporarily withdrawing from location, selection, settlement, filing, entry, patent or occupation under the mineral or nonmineral public land laws the lands, among

others, described in Paragraph II of said bill of complaint, but denies that said order withdrew said land or any part thereof from mineral occupation or exploration; denies that since [31] September 27, 1909, none of said lands have been subject to exploration for mineral, oil, petroleum or gas, or to occupation or to the institution of any right thereto under the public land laws of the United States.

On the contrary this defendant alleges that as to the lands described in Paragraph II of said bill of complaint, this defendant, the Mays Consolidated Oil Company, and J. M. McLeod, were at the time of the filing of said bill of complaint and for a long time prior thereto authorized by the provisions of said Act of Congress, approved June 25, 1910, to continue in the occupation of said land and in its exploration and development for petroleum or gas or any other minerals therein contained for that by the terms of said Act of Congress whatever force or effect said order of withdrawal of September 27, 1909, had as to said land described in said Paragraph II was vacated and made null and void.

IV.

Denies that this defendant or its codefendants, J. M. McLeod and Mays Consolidated Oil Company, entered upon the land referred to in Paragraph IV of said bill of complaint and long or at any other time subsequent to September 27, 1909, for the purpose of exploring said land for petroleum or gas.

On the contrary this defendant alleges that its codefendant, J. M. McLeod, entered upon said land for

said purpose long prior to September 27, 1909, and on said date he was a *bona fide* occupant and claimant of the land described in said Paragraph II and the whole thereof in diligent prosecution of work leading to a [32] discovery of oil or gas and thereafter continued in diligent prosecution of said work until the discovery in said land of petroleum therein.

Denies that any entry upon said land by said defendants or either of them was in violation of any proprietary or other right of the plaintiff or in violation of the laws of the United States or the lawful orders or proclamations of the President of the United States or in violation of said order of withdrawal of September 27, 1909.

V.

Denies that a discovery of petroleum, gas or other minerals was not made on said land described in said Paragraph II on or before September 27, 1909, and denies that defendants J. M. McLeod, Mays Consolidated Oil Company, or this defendant, had acquired no rights on or with respect to said land on or prior to said date.

VI.

Denies that mineral was first produced upon said land in the latter part of the year 1910 or long after said order of withdrawal of September 27, 1909.

Admits that this defendant has produced petroleum from said land in the total amount of 761,839.41 barrels and that there has been sold to the General Petroleum Company 508,696.28 barrels, to the Standard Oil Company 105,312.01 barrels and to the Asso-

ciated Oil Company 147,831.12 barrels.

VII.

Admits that this defendant is now extracting oil from said land but denies that it is now drilling oil or gas wells thereon or in any wise trespassing upon said land; or that it will be wrongfully sold or converted; [33] denies that various or any trespasses or waste will be committed upon said land if this defendant continues to procure oil or gas therefrom, to the irreparable or other injury of the complainant.

Denies that anything being done upon said land by this defendant will in any way interfere with the policies of the complainant mentioned in Paragraph VII of said bill of complaint.

VIII.

Admits that this defendant claims a right, title and interest in the land described in Paragraph II of said bill of complaint and in and to the oil, petroleum and gas therein and extracted therefrom and in the proceeds arising from the sale thereof, and that said claim is predicated upon the location thereof by the predecessors in interest of this defendant under the mining laws of the United States, to wit, a location made by the locators named in Paragraph X of said bill of complaint.

Denies that said location or that said claim is invalid against the plaintiff or that no rights have accrued to this defendant either directly or immediately under said location; denies that said claim so asserted casts a cloud upon the title of the complainant or wrongfully interfered with its operation or

disposition of said land to its great or other irreparable or other injury; denies that complainant is without redress and adequate remedy save by this suit or that this suit is necessary to avoid a multiplicity of actions.

On the contrary this defendant alleges that a suit in ejectment with damages for withholding possession would afford this plaintiff full, complete, speedy and adequate relief in the premises. [34]

IX.

Denies that neither of the defendants nor any person or corporation from whom they or either of them have derived an interest in said land was at the date of said order of withdrawal of September 27, 1909, a *bona fide* occupant or claimant of said land in the diligent prosecution of work leading to a discovery of oil or gas.

X.

Admits the allegations of Paragraph X.

XI.

Denies that said location notice was filed or posted by or for the sole benefit of the defendant J. M. McLeod or for some one else other than the persons whose names were used in said location notice; denies that the said locators were pretended locators or were acting for the benefit of any person, firm or corporation other than themselves; denies that the persons named in said location notice were not *bona fide* locators or that each of them was without interest in said location notice so filed or the land described therein; denies that their names were not used to

enable them or either of them to secure said lands or patent therefor; denies that each of said persons was a mere dummy used for the purpose alleged in Paragraph XI of said bill of complaint.

On the contrary this defendant alleges that it is informed and believes and upon such information and belief states the fact to be that the persons named in Paragraph X of said complaint as locators of the Ohio Placer Mining Claim covering the land described in said bill of complaint, were each citizens of the United States on January 1, 1909, and were on said date associated together in good faith for the purpose of locating said [35] land and acquiring title thereto under and in pursuance of the laws of the United States relating to the sale and disposition of lands commonly known as placers, and that on said date said locators in compliance with said laws duly located said land and then and there and thereby each of them became invested with the title to an undivided one-eighth interest in and to said land; that thereafter said defendant J. M. McLeod became vested by mesne conveyances with the title of said locators and each of them to said land and ever since has been and now is the owner thereof subject to the rights of the defendant therein.

Alleges that this defendant claims no right, title or interest in or to any part of the land described in said complaint except the south half of the northeast quarter and the south half of the north half of the northeast quarter of said Section 28.

XII.

Denies that because of the premises and said bill

of complaint none of the defendants have or ever have had any right, title or interest in or to said land or any part thereof or any right, title or interest in or to the petroleum, mineral, oil or gas deposit therein, or any right to extract petroleum or mineral, oil or gas from said land or to convey or dispose of the petroleum or gas so extracted or any part thereof; denies that the acts of those defendants who have entered upon said land or drilled oil wells or used or appropriated the petroleum or gas deposit therein or assumed to sell or convey any interest in or to any part of said land were either or all in violation of the laws of the United States or of [36] the said order of withdrawal; denies that all or any of said acts were or are in violation of the rights of the plaintiff or that said acts interfered with the execution by plaintiff of its public or other policies with respect to said lands.

On the contrary this defendant alleges that the entry of its predecessors in interest upon said land and its entry thereupon and the development thereof for mineral was pursuant to the invitation and encouragement so to do of the plaintiff by virtue of its long established and continued policy of liberality toward miners and others desiring to develop the mineral lands of the plaintiff and acquire title thereto, which said policy, invitation and encouragement has continuously existed for more than forty years, and had at the time of said location become so well settled and known and has been acted upon by both plaintiff and its citizens for so long as to have be-

come, long before September 27, 1909, and was on said date, a rule of property and was thereafter by Act of Congress approved June 25, 1910, aforesaid, expressly recognized and reiterated by the making of the President's order of temporary withdrawal dated September 27, 1909, wholly inoperative as to the lands described in the bill of complaint in this suit.

Denies that this plaintiff is without full or adequate remedy save in a court of equity or that matters of the nature stated in said bill of complaint are properly cognizable and relievable in a court of equity.

WHEREFORE defendant, Consolidated Mutual Oil Company, having fully answered said bill of complaint, prays that plaintiff take nothing in this case against [37] it and that the defendant be hence dismissed with its costs of suit, and that it be awarded such other and further relief as may appear to be just and equitable.

U. T. CLOTFELTER,

Solicitor for defendant, Consolidated Mutual Oil Company.

[Endorsed]: No. A–41—Equity. Dept. ——. In the District Court of the United States, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Record Oil Company et al., Defendants. Answer of Consolidated Mutual Oil Company. Filed Nov. 20, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Received copy of the within Answer, this 20th day of November, 1915. Albert

Schoonover, U. S. Atty. By M. L., Attorney for Plaintiff. U. T. Clotfelter, 409 Kerckhoff Building, Los Angeles, California, Telephone: Main 2980, Attorney for said Defendant. [38]

In the District Court of the United States in and for the Southern District of California, Northern Division.

No. A–41.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY et al.,

Defendants.

Answer of Defendant J. M. McLeod.

Comes now J. M. McLeod, one of the defendants above named and for answer to the bill of complaint filed herein, denies and avers as follows:

I.

Denies that on the 27th day of September, 1909, or for a long time prior thereto, or at any time since said date, plaintiff has been, or now is, entitled to the possession of the petroleum or mineral oil or gas lands particularly described in paragraph II of said complaint, or of the oil, petroleum, gas or other minerals contained in said land.

II.

Denies that the President of the United States on the 27th day of September, 1909, or at any time, withdrew or reserved all or any part of the land in said

complaint described, from mineral exploration or from location, settlement, selection, filing, entry, patent, occupation, or disposal under the mineral or nonmineral laws of the United States; and denies that since said date, or at any time, said lands have not been subject to exploration for mineral oil, petroleum or gas, or to occupation or the institution of any right under the public land laws of the United States. [39]

III.

Denies that, either in violation of the proprietary or any rights of the plaintiff, or in violation of the laws of the United States, or of the lawful orders or proclamations of the President of the United States, or in violation of the order of withdrawal of the 27th of September, 1909, the defendants, or any of them, entered upon said land at any time subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum or gas, but on the contrary alleges the facts with reference to the entry upon and exploration of said lands, to be as hereinafter set forth.

IV.

Denies that the defendants had not acquired any rights on or with respect to said lands, on or prior to September 27, 1909, but, on the contrary, alleges the fact to be that said defendants, and particularly the predecessors in interest and persons under whom this defendant claims, had on the first day of January, 1909, obtained and acquired the exclusive right to occupy and possess said lands, and to explore for

and develop the oil and gas therein, under the mining laws and regulations of the United States, which rights were at all times subsequent thereto, continuously maintained in full force and effect by said predecessors and persons under whom this defendant claims, and by this defendant.

V.

Admits that after the order of withdrawal of September 27, 1909, there was produced petroleum and gas from said lands, but denies that any entry upon said land for the purpose of producing said petroleum or gas was made subsequent to September 27, 1909; on the contrary this defendant alleges the fact to be that such entry was made thereon in conformity with the mining laws and [40] regulations of the United States long prior to said September 27, 1909, and that on said last-mentioned date there was in existence and in full force and effect a valid and subsisting location of said land made under the Placer Mining Laws and Regulations of the United States, being the same location referred to in paragraph X of said complaint and designated as the Ohio Placer Mining Claim, and that on said 27th day of September, 1909, and at all times prior thereto, from the date of the making of said location, said locators, and those claiming through them, were in the actual and *bona fide* occupation and possession of said lands, actually engaged in the diligent prosecution of work thereon looking to the discovery of oil or gas therein, which work was continued diligently and in good faith until such discovery, and thereafter.

VI.

Denies that the defendants or any of them, and particularly this defendant, are trespassing upon said land or any part thereof; denies that any oil or gas is being wrongfully sold or converted, or has at any time been wrongfully taken, sold or converted by any of the defendants from said land or any part thereof; denies that any trespassing or waste has been or will be committed on said land or any part thereof, either to the irreparable or any injury of plaintiff.

VII.

Alleges that he is not advised as to the policies of plaintiff with respect to the conservation, use or disposition of said land referred to in paragraph VII of said complaint, or of the petroleum or gas contained therein, except as such policies are indicated by the mining laws and regulations of the complainant, and as to such laws and regulations, this defendant and those through and under whom he claims said land, have in all respects and at all times fully complied with such laws and regulations. [41]

VIII.

This defendant denies that he is *now or* at any time for more than two years last past, has produced any oil, petroleum or gas or other material whatsoever from said land, but on the contrary alleges the fact to be that for said period of more than two years the land described in said complaint has not produced any oil, petroleum or gas whatsoever.

IX.

This defendant alleges that in the year 1910, by

agreement and contract with the locators of the land described in the bill of complaint, and persons claiming through said locators, it acquired the right to the possession and occupancy of the land described in the bill of complaint; that at all times from and after the first day of January, 1909, said locators and persons claiming through them, were in continuous, diligent and *bona fide* pursuit of work leading to and which did ultimately lead to the discovery of oil in said land; and that ever since the time of said agreements, this defendant has been continuously in the actual, *bona fide* possession and occupancy of the land described in the complaint, and the whole thereof, and in the diligent pursuit of work leading to and which did lead to the discovery of oil therein; this defendant denies that his claim to said land is derived directly or otherwise from any pretended notice or notices of mining locations, or by conveyances, contracts or liens, directly or otherwise, from any pretended location, but on the contrary alleges the fact to be that his claim is based upon an actual, valid, *bona fide* and existing location made on the first day of January, 1909, and duly and regularly maintained in full force and effect at all times from and after said date.

X.

Denies that none of the defendants nor any person or corporation from whom they have derived any interest in said lands, [42] was on the date of the order of withdrawal of the 27th day of September, 1909, a *bona fide* occupant or claimant of said lands, or in the diligent prosecution of work leading

to the discovery of oil or gas therein, but on the contrary alleges the fact to be that said locators and the persons claiming through and under them as aforesaid, were on said 27th day of September, 1909, and at all times from and after January 1, 1909, in the *bona fide* occupancy of said land, claiming the same in good faith, and in the diligent prosecution of work thereon leading to the discovery of oil or gas therein.

XI.

Denies that the location notice referred to in paragraph XI of the complaint, was filed or posted by or for the sole or any benefit of this defendant, or for the benefit of any person whomsoever other than the persons whose names were used in said location notice; denies that the names of said locators or any of them were used to acquire more than twenty acres of mineral land in violation of the laws of the United States; denies that the persons whose names were used in said location notice or any of them were not *bona fide* locators, or that any of said persons was without any interest in said location notice; avers that the names of said locators and each of them, were used to enable said persons and each of them to secure the land described in said location notice, and patent therefor; denies that any of said persons was a dummy, but on the contrary alleges the fact to be that said location was made by the persons named therein and specified in said bill of complaint, in good faith, by and for the mutual benefit of said locators, and in all respects in conformity with the mining laws and regulations of the United States.

XII.

Denies that the defendants have no right, title or interest in or to said land or any part thereof, or any right, [43] title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey or dispose of the petroleum or gas so extracted, but on the contrary alleges the fact to be that by virtue of the mineral location aforesaid, and of agreements and conveyances from the locators therein named, and those claiming under and through them, and by virtue of compliance with the mining laws and regulations of the United States, this defendant is lawfully entitled to the possession of the northeast quarter of Section 28, township 31 south, range 23 east, M. D. M., and to the minerals therein contained, and to any and all proceeds of such minerals.

XIII.

That the matters in issue therein, are not properly or at all matters of equity jurisdiction; that this action was improperly commenced in equity, and should have been brought as an action at law.

WHEREFORE, this defendant prays that this cause be transferred to the law side of the court and there proceeded with in accordance with the law and practice in actions at law;

That this defendant be hence dismissed, and for his costs.

OSCAR LAWLER,
Solicitor for Defendant J. M. McLeod.

[Endorsed]: No. A–41. District Court of the United States, Southern District of California, Northern Division. United States of America, Plaintiff, vs. Record Oil Company, et al., Defendants. Answer of Defendant, J. M. McLeod. Received Copy of the Within Answer this 28th Day of December, 1915. Albert Schoonover, U. S. Atty., L., Attorney for Plaintiff. Filed Dec. 28, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Oscar Lawler, Attorney-at-law, 524–527 Security Building, Phones A–2268, Main 2403, Solicitor for J. M. McLeod. [44]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

A–41.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY, and L. B. McMURTRY,

Defendants.

Notice of Motion for Restraining Order and Receiver.

To Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, J. M. McLeod, Louis Titus, North American Oil Consolidated, Standard Oil Company, General Petroleum Company, Associated Oil Company, and L. B. McMurtry:

You, and each of you, will take notice that the plaintiff, the United States of America, will move before the United States District Court for the Southern District of California, and the Judge thereof, M. T. Dooling, United States District Judge, at the courtroom of the said Court in the Federal Building, at Los Angeles, California, on the 30th day of November, 1915, at 10 o' clock, A. M., in the above-entitled cause, for the granting of an order restraining you, and each of you, your officers, agents, servants, and attorneys, from taking or moving from the said premises [45] described in the bill of complaint herein, any of the mineral oil or petroleum deposited therein, or any of the gas in or under said land, and from committing in any manner any trespass or waste upon any of said land, or with reference to any of the minerals deposited therein, pending the disposition of the said cause or the further order of this Court.

And you and each of you will further take notice that the plaintiff, the United States of America, will then and there move the said Court and the Judge thereof in the above-entitled cause for the

granting of an order appointing a receiver for the property described in the bill of complaint herein, and operated by you and each of you, and for the oil and petroleum heretofore extracted from said land, to be dealt with by the receiver in such manner as to the Court may seem proper.

The above motions will be submitted upon the verified bill of complaint on file herein, affidavits, records, documents and oral testimony.

This, the 23d day of November, 1915.

E. J. JUSTICE,
FRANK HALL,

Solicitors for the Plaintiff, United States of America. [46]

A–41.

Return on Service of Writ.

United States of America,
Southern District of California,—ss.

I hereby certify and return that I served the annexed Notice of Motion for Restraining Order and Receiver on the therein-named Oscar Lawler, by handing to and leaving a true, and correct copy thereof with the clerk in the office of the above-named personally at Los Angeles, California, in said District, on the 24th day of November, A. D. 1915.

C. T. WALTON,
U. S. Marshal,
By F. G. Thompson,
Deputy.

A–41.

RETURN ON SERVICE OF WRIT.

United States of America,
Southern District of California,—ss.

I hereby certify and return that I served the annexed Notice of Motion for Restraining Order and Receiver on the therein-named U. T. Clotfelter by handing to and leaving a true and correct copy thereof with U. T. Clotfelter, personally at Los Angeles, California, in said District on the 24th day of November, A. D. 1915.

C. T. WALTON,
U. S. Marshal,
By F. G. Thompson,
Deputy.

[Endorsed]: No. A–41. In the District Court of the United States for the Southern District of California. United States [47] of America, Plaintiff, vs. Record Oil Company et al., Defendants. Notice of Motion for Restraining Order and Receiver. Filed Dec. 1, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. [48]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

A–41.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY, and L. B. McMURTRY,

Defendants.

Notice of Motion for Restraining Order and Receiver.

To Record Oil Company, Consolidated Mutual Oil Company, Mays Consolidated Oil Company, J. M. McLeod, Louis Titus, North American Oil Consolidated, Standard Oil Company, General Petroleum Company, Associated Oil Company, and L. B. McMurtry:

You, and each of you, will take notice that the plaintiff, the United States of America, will move before the United States District Court for the Southern District of California, and the Judge thereof, M. T. Dooling, United States District Judge, at the courtroom of the said Court in the Federal

Building, at Los Angeles, California, on the 30th day of November, 1915, at 10 o' clock, A. M., in the above-entitled cause, for the granting of an order restraining you, and each of you, your officers, agents, servants, and attorneys, from taking or moving from the said premises [49] described in the bill of complaint herein, any of the mineral oil or petroleum deposited therein, or any of the gas in or under said land, and from committing in any manner any trespass or waste upon any of said land, or with reference to any of the minerals deposited therein, pending the disposition of the said cause or the further order of this Court.

And you and each of you will further take notice that the plaintiff, the United States of America, will then and there move the said Court and the Judge thereof in the above-entitled cause for the granting of an order appointing a receiver for the property described in the bill of complaint herein, and operated by you and each of you, and for the oil and petroleum heretofore extracted from said land, to be dealt with by the receiver in such manner as to the Court may seem proper.

The above motions will be submitted upon the verified bill of complaint on file herein, affidavits, records, documents and oral testimony.

This, the 23d day of November, 1915.

E. J. JUSTICE,
FRANK HALL,
Solicitors for the Plaintiff, United States of America. [50]

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Notice of Motion for Restraining Order, etc., on the therein-named A. L. Weil, Pillsbury, Madison & Sutro, and Edmund Tauszky, by handing to and leaving a true and correct copy thereof with A. L. Weil, Oscar Sutro, member of firm of Pillsbury, Madison & Sutro, and Edmund Tauszky, personally, at San Francisco, California, in said District on the 24th day of November, A. D., 1915.

J. B. HOLOHAN,
U. S. Marshal,
By J. W. Jessen,
Office Deputy.

[Endorsed]: No. A–41. In the District Court of the United States for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company et al., Defendants. Notice of Motion for Restraining Order and Receiver. Filed Dec. 6, 1915. Wm. M. Van Dyke. By T. F. Green, Deputy Clerk. [51]

At a stated term, to wit, the Special October Term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the City of Los Angeles, on Monday, the twenty-ninth day of November,

in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable M. T. DOOLING, District Judge.

No. A–41—EQUITY.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

RECORD OIL COMPANY et al.,

Defendants.

Minutes of Court—November 29, 1915.

At the hour of 2 o'clock, P. M., on motion and by consent, it is ordered that this cause be, and the same hereby is submitted to the Court for its consideration and decision on applications for appointment of receiver upon affidavits to be served and filed as follows, to wit: On behalf of complainants within ten (10) days after December 1st, 1915, and on behalf of all defendants served within ten days thereafter, complainants and defendants to have five (5) days after the expiration of the time for filing affidavits within which to submit briefs and points and authorities herein, if they so elect, and it is further ordered that the service of all copies of affidavits shall be by mail; and this cause having thereupon been called for hearing on the motions of defendant, Associated Oil Company, to dismiss the bill of complaint as to said defendant, to set aside service of subpoena ad respondendum on said [52] defendant, to dismiss the bill of complaint, and to transfer this cause to the law side of the docket; and said motions having been argued, in support thereof, by Edmund Tauszky,

Esq., of counsel for said defendant, Associated Oil Company, and in opposition thereto by Frank Hall, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States; it is ordered that this cause be, and the same hereby is submitted to the Court for its consideration and decision on said motions to dismiss and on the motion to set aside service on said defendant, Associated Oil Company, and on said motion to transfer this cause to the law side of the docket, upon the argument thereof, and upon the argument had and briefs filed in the United States Circuit Court of Appeals for the Ninth Circuit in the appeal of defendant, Eldora Oil Company, in the cause in this court entitled The United States of America, Complainants, vs. Midway Northern Oil Company, et al., Defendants, No. 47—Civil, Northern Division; and it is further ordered that defendant, Associated Oil Company may have ten (10) days after the ruling of the Court on said motions to dismiss the bill of complaint and motion to transfer this cause to the law side of the docket, and after the receipt of advice from the clerk of this court as to said ruling, if such ruling shall be adverse to said defendants, within which to file answer to the bill of complaint in this cause. [53]

At a stated term, to wit, the Special October Term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the City of Los Angeles, on Tuesday, the thirtieth day of November, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable M. T. DOOLING, District Judge.

No. A–41—EQUITY.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

RECORD OIL COMPANY et al.,

Defendants.

Minutes of Court—November 13, 1915.

On motion of Frank Hall, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States, it is ordered that the order heretofore made and entered herein submitting this cause upon applications for receiver be, and the same hereby is amended, by providing that, in addition to the affidavits to be served and filed, this cause also stand submitted as to said applications for receiver upon the verified pleadings filed in this cause. **[54]**

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–41—EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

RECORD OIL CO. et al.,
Defendants.

Order Granting Application for Appointment of Receiver, etc., in Equity Case, A–41.

ALBERT SCHOONOVER, Esq., United States Attorney, E. J. JUSTICE, Esq., A. E. CAMPBELL, Esq., and FRANK HALL, Esq., Special Assistants to the Attorney General, Attorneys for the Plaintiff.

OSCAR LAWLER, Esq., Attorney for J. M. McLeod and Record Oil Co., A. L. WEIL, Esq., Attorney for General Petroleum Co.

For the reasons given in U. S. vs. Consolidated Midway Oil Co., et al., No. A–2—Equity and U. S. vs. Thirty Two Oil Co., et al., No. A–38—Equity, this day decided, the application for the appointment of a receiver is granted, and the motions to transfer to the law side, to dismiss, to strike out and for further and better particulars are denied.

February 1st, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: No. A–41—Equity. U. S. District Court, Southern District of California, Northern Division. The United States of America, Plaintiff, vs. Record Oil Co., et al., Defendants. Order Granting Application for Appointment of Receiver, and Denying Motions to Transfer to Law Side, to Dismiss, to Strike Out and for Further and Better Particulars. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[55]**

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–2—EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CONSOLIDATED MIDWAY OIL CO. et al.,
Defendants.

Order Denying Motions to Transfer Case from Equity to Law Side of Court, etc.

ALBERT SCHOONOVER, Esq., United States Attorney, E. J. JUSTICE, Esq., A. E. CAMPBELL, Esq., and FRANK HALL, Esq., Special Assistants to the Attorney General, Attorneys for the Plaintiff.

GEO. E. WHITAKER, Esq., Attorney for Midnight Oil Co., Edith F. Coons and National Pacific Oil Co., M. S. PLATZ, Esq., Attorney for Mary F. Francis, HUNSAKER & BRITT, Attorneys for Citizens National

Bank, L. C. GATES, Esq., Attorney for Title Insurance & Trust Co., FLINT & JUTTEN, Attorneys for California National Supply Co., OSCAR LAWLER, Esq., Attorney for Four Investment Co., PILLSBURY, MADISON & SUTRO, Attorneys for Standard Oil Co., J. P. SWEENEY, Esq., Attorney for Maricopa Oil Co.

As in a number of other cases submitted at the same time, a motion is presented to transfer this case from the Equity to the Law side of the Court. The several grounds of the motion fall generally under one of the following heads:

1. That a plain, adequate and complete remedy may be had at law in an action in ejectment. **[56]**

2. That the present action is in effect one in ejectment and must be tried on the law side where the parties are entitled to a jury trial.

My conclusions as to these contentions, which a press of other matters does not afford me time to do more than state without elaboration, are as follows:

1. That ejectment does not afford a plain, adequate and complete remedy for the matters complained of in the bill of complaint herein.

2. That neither in form nor in substance is the action one in ejectment. Its purpose is the prevention of waste—to restrain the defendants from withdrawing the oil from the lands in question. All other matters embraced in the bill are subordinate to this. Whether the defendants, by maintaining derricks and other structures on the lands, retain such possession as they may have acquired as

against the Government, is of minor importance under the averments of the bill, so long as they do not destroy the real value and substance of the lands by withdrawing the oil therefrom before their right to do so shall have been finally determined.

It is not upon this motion decided whether such right should be finally determined by the land department or by the Court.

The motion to transfer is therefore denied. The motions to dismiss, to make more certain and to strike out are also denied.

February 1st, 1916.

M. T. DOOLING,
Judge. [57]

[Endorsed]: No. A–2—Equity. U. S. District Court, Southern District of California, Northern Division. The United States of America, Plaintiff, vs. Consolidated Midway Oil Co. et al., Defendant. Opinion and Order Denying Motions to Transfer to Law Side, to Dismiss, to Make More Certain and to Strike Out. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [58]

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–38—EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THIRTY TWO OIL CO. et al.,
Defendants.

Order Granting Application for Appointment of Receiver, etc., in Equity Case No. A–38.

ALBERT SCHOONOVER, Esq., United States Attorney, E. J. JUSTICE, Esq., A. E. CAMPBELL, Esq., and FRANK HALL, Esq., Special Assistants to the Attorney General, Attorneys for the Plaintiff.

EDMUND TAUSZKY, Esq., Attorney for Associated Oil Co., HUNSAKER & BRITT, Attorneys for Thirty Two Oil Co. and J. M. McLeod, OSCAR LAWLER, Esq., Attorney for Buick Oil Co., GEO. E. WHITAKER, Esq., Attorney for California Midway Oil Co.

As in a number of other cases submitted at the same time complainant moves for an injunction, and the appointment of a receiver. In my judgment the present status of the property in these cases should be maintained, either by enjoining the withdrawal of oil, or by the appointment of a receiver, until the right of defendants to withdraw oil from the land is finally determined either by the land department or by the Court. It seems to me that the appointment of a receiver will work less hardship to defendants than the granting of an injunction. For this reason the application for the appointment of a receiver is granted. The motions to dismiss, to strike out, and make more certain and to transfer to the law side are denied.

February 1st, 1916.

M. T. DOOLING,
Judge. [59]

[Endorsed]: No. A–38—Equity. U. S. District Court, Southern District of California, Northern Division. The United States of America, Plaintiff, vs. Thirty Two Oil Co. et al., Defendants. Opinion and Order Granting Application for Appointment of Receiver, and denying Motions to Dismiss, to Strike Out, to Make More Certain and to Transfer to Law Side. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[60]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY, and L. B. McMURTRY,

Defendants.

Order Appointing Receiver.

This suit coming on to be heard on motion of the complainant for the appointment of a receiver and

for an injunction, and having been heard on the 30th day of November, 1915,

IT IS NOW CONSIDERED, ORDERED AND ADJUDGED that HOWARD M. PAYNE be, and he is hereby, appointed receiver of all the property described in the Bill of Complaint herein claimed by the defendants, to wit:

> The Northeast quarter of Section Twenty-eight, (28), Township Thirty-one (31) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, and situated in Kern County, State of California,

and of the oil, gas, and all other property of every kind now situated on the said land, or already extracted therefrom, and still in the possession of defendants; and the defendants, **[61]** and each of them, their agents, attorneys and employees, are enjoined from removing said oil, gas, or other property, or any part thereof, from said land, or in any manner interfering with the order of this Court, and are enjoined from further producing oil from said land, except by permission and under the direction of the said receiver.

Said receiver is directed to receive, and the said defendants are directed to surrender to said receiver all moneys in their hands or in the hands of any person or corporation for them, which are the proceeds of the sale of oil or gas produced from said lands hereinbefore described, and such persons holding such funds are directed to pay same to said receiver; and the said receiver is directed to collect any notes, accounts, or other evidences of debt due or payable

on account of oil and gas produced from said land and sold by or for said defendants, or any of them.

The said receiver is given power and directed to operate any oil or gas well or wells on said property, or to permit them to be operated by the respective defendants now in possession of or operating same, or who have heretofore operated on said lands; or to close said wells, if he deems it necessary or advisable to do so in order to conserve the oil and gas in said lands and prevent said property from being damaged or the oil and gas from being wasted.

The said receiver is directed to ascertain the quantity of oil and gas heretofore extracted by said respective defendants, and what disposition has been made thereof, and keep an account thereof, and to keep an accurate account of all oil and gas hereafter produced from said lands, and to sell said oil and gas for the best price obtainable. **[62]**

For the purpose of making an investigation and determining the condition of wells drilled on said lands, and particularly for the purpose of determining whether water is infiltrating the oil sands or reservoirs on said lands, and for the further purpose of ascertaining the amount of oil and gas heretofore produced, the price at which the same has been sold, and the value thereof, the receiver is directed and empowered to examine the logs of the wells and the books of account kept by the defendants or any of them in the development and operation of said lands.

For the purpose of preventing damage to said lands by the infiltration of water into the oil sands

and otherwise, and for the purpose of protecting and operating the said property and carrying out the provisions of this order, the said receiver is authorized to employ such assistants and incur such expense, to be paid out of the moneys coming into his hands as receiver, as he shall deem necessary, subject to the approval of this Court.

A bond in the sum of Ten Thousand (10,000) Dollars, to be approved by this Court, shall be given by the receiver within fifteen days from the filing of this order; provided the solicitor for the complainant or for the defendants, or either of them, may at any time upon one day's notice to counsel for the opposite parties, apply to the Court for an increase in the amount of said bond.

The moneys coming into the hands of the said receiver shall, unless otherwise directed by the Court, be deposited in a bank or banks in special interest-bearing accounts in the joint name of the receiver and the clerk of this court, and subject to the joint check and control of such persons, exept so much of said funds as may be **[63]** necessary to pay the monthly current expenses of the receiver in executing the orders of this Court, and such sums as may be necessary for such purposes shall be deposited in a bank or banks, to the credit of such receiver, as receiver for the respective defendants, and shall be subject to the receiver's check.

The amount of compensation to be paid to the receiver in this suit is to be determined hereafter.

This 2 day of February, 1916.

M. T. DOOLING,
United States District Judge.

[Endorsed]: No. A–41. In the District Court of the United States for the Southern District of California, Northern Div., Ninth Circuit. United States of America, Plaintiff, vs. Record Oil Company et al., Defendants. Order Appointing Receiver. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[64]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY, and L. B. McMURTRY,

Defendants.

Notice of Lodgment of Statement of Evidence on Appeal.

To the United States of America, Plaintiff Above-Named, and to E. J. Justice, Esq., Albert Schoonover, Esq., A. E. Campbell, Esq., and Frank Hall, Esq., Solicitors for said Plaintiff:

PLEASE TAKE NOTICE that on the 15th day of March, 1916, defendants and appellants, J. M. McLeod and Consolidated Mutual Oil Company, lodged with the clerk of the above-entitled court their statement of evidence to be included in Transcript on Appeal; and that on the 25th day of March, 1916, said defendants and appellants will ask the Court or Judge to approve said statement of evidence.

Dated: March 15th, 1916.

OSCAR LAWLER,

Solicitor for Defendant and Appellant J. M. McLeod.

U. T. CLOTFELTER,
A. L. WEIL,
CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Defendant and Appellant, Consolidated Mutual Oil Co. **[65]**

Due service and receipt of a copy of the within Notice of Lodgment of Statement, also copy of Statement of Evidence, this 15th day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for ————.

[Endorsed]: No. A-41—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company et al., Defendants. Notice of Lodgment of Statement of Evidence to be Included in Transcript on Appeal. Filed Mar. 16, 1916. Wm.

M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles S. Wheeler, Attorney for Defendant, Cons. Mutual Oil Co., Union Trust Building, San Francisco. [66]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY, and L. B. McMURTRY,

Defendants.

Statement of Evidence to be Included in Transcript on Appeal.

The motion for the appointment of a receiver was heard and determined upon the foregoing complaint and answers and upon the following affidavits:

1. AFFIDAVITS OFFERED BY PLAINTIFF: [67]

Affidavit of E. W. Bailey.

State of California,
County of Kern,—ss.

E. W. Bailey, being first duly sworn, deposes and says:

That he is a citizen of the United States and over the age of 21 years, and that his postoffice address is Taft, California.

That early in the spring of 1909 he assumed the position of superintendent of the Mays Oil Company, now known as the Mays Consolidated Oil Company. That the derrick for well No. 1 on the SW. ¼ of Section 28, Township 31 South, Range 23 E., M. D. M., was erected a short time after he went to work for the Mays Oil Company, and probably about May, 1909, and that about the same time the said derrick on the SW. ¼ of Section 28, was erected, skeleton derricks were also erected on the NW. ¼, NE. ¼ and SE. ¼ of said Section 28, T. 31 S., R. 23 E., one skeleton derrick being erected on each of said quarter sections; that these skeleton derricks were all erected near the center of said Section 28, and that all of them were in plain sight from and within a short distance of well No. 1 on the SW. ¼ of said Section 28. That he is unable to state the exact time these skeleton derricks on the NW. ¼, NE. ¼ and SE. ¼, Section 28, T. 31 S., R. 23 E. were erected, but that they were constructed after he assumed the position of superintendent for the Mays Oil Co., which was in the early spring of 1909, and between

that time and the time drilling was started on Mays No. 1 well on the SW. ¼ of Section 28, which said drilling commenced about August, or September, 1909; that he is positive these skeleton derricks on the said NW. ¼, NE. ¼ and SE. ¼, Section 28, T. 31 S., R. 23 E. were completed before drilling commenced on well No. 1 on the SW. ¼ of said Section 28, which, as heretofore stated, was about August or September, 1909. [68]

Affiant further states that some time during the summer of 1909, and prior to the time drilling commenced on well No. 1 on the SW. ¼ of said Section 28, which was about August or September, 1909, a bunk-house about 12x20 feet in size was erected on the NW. ¼ of said Section 28, and a cook-house, about 20x30 feet in size, was erected on the said NE. ¼ of said Section 28; and that to the best of his recollection at this time, the work of building said bunk-house and cook-house did not require, altogether, more than about 15 days' time.

Affiant further states that he was employed as field superintendent of the Mays Oil Company from early in the spring of 1909 to about some time in November, 1909, and that during said period he was in direct charge of the work of said company on said Section 28, T. 31 S., R. 23 E., and was over and upon said section practically every day during said period from the spring of 1909 to November, 1909; and that if any work had been performed on the NE. ¼, NW. ¼ or SE. ¼ of said Section 28 during said period last above mentioned, he would have known of it

and would have observed evidences of it. That no work was done or performed on said NE. ¼, NW. ¼ or SE. ¼ of said Section 28, T. 31 S., R. 23 E., during the said period, from the spring of 1909 to November, 1909, other than is hereinbefore set out, except that some time during the summer of 1909 he recalls that some sagebrush was cleared away from the land around the three skeleton derricks on the NE. ¼, NW. ¼ and SE. ¼ of said Section 28; and that when this affiant left the employ of the Mays Oil Co. in November, 1909, the only improvements on the said NE. ¼, NW. ¼ and SE. ¼, Section 28, T. 31 S., R. 23 E. consisted of a skeleton derrick on each of said three quarter-sections, together with a bunk-house on the NW. ¼ and a cook-house on the NE. ¼ of said section. [69]

That affiant resumed work with the Mays Oil Co. as field superintendent in January or February, 1910, and was in charge of said company's work on Section 28, T. 31 S., R. 23 E. from that time until about August, 1910; that upon his return to work for said company on said Section 28 in January, or February, 1910, he observed the condition of said NE. ¼, NW. ¼ and SE. ¼, Section 28, T. 31 S., R. 23 E., and found that the improvements then upon the said last above-described lands were the same as when he left the employ of said Mays Oil Co. in November, 1909, to wit: a skeleton derrick on each of said three quarter sections, a bunk-house on the NW. ¼, and a cook-house on the NE. ¼ of said Section 28.

That after returning to work for the Mays Oil Company on said Section 28 in January or February,

1910, a new skeleton derrick was erected on the NE. ¼ of Section 28, which work was done and performed under his supervision; that he is unable to state just when this new skeleton derrick was erected, but that the work of building the same, to the best of his recollection at this time, did not require more than four or five days' time. Affiant further states that some time in June, 1910, the cellar at the derrick on the NE. ¼ of said Section 28 was dug under his supervision, and that the digging of this cellar, to the best of his recollection at this time, required about four days' time.

Affiant further states that after returning to work for the Mays Oil Co. in January or February, 1910, the skeleton derrick on the NW. ¼ of said Section 28, was timbered up under his supervision, that is to say, the derrick was completed as a standard derrick, ready for standard drilling, with engine-house, belt-house, bull-wheel, calf-wheel, etc.; that he is unable to state [70] at this time just when this work on the said NW. ¼, Section 28, as aforesaid, was performed, but to the best of his recollection at this time the rigging up of this said derrick required about five days' time.

Affiant further states that up to the time he left the employ of the Mays Oil Company, which was about August, 1910, boilers, engines, or tools had not been placed or installed at the derricks on either the NE. ¼, NW. ¼, or SE. ¼, of Section 28, T. 31 S., R. 23 E., and that no drilling work of any kind or character had been performed upon said three quar-

ter-sections, namely, the NE. ¼, NW. ¼ or SE. ¼, Section 28, T. 31 S., R. 23 E., prior to the time he left the employ of the Mays Oil Company, which was about August, 1910; and that up to that time, namely, August, 1910, no discovery of oil or gas had been made upon either the NE. ¼, the NW. ¼ or the SE. ¼ of said Section 28, T. 31 S., R. 23 E. That he was over and upon said Section 28, T. 31 S., R. 23 E. practically every day from about January or February, 1910, to about August, 1910, and that if any work had been performed on the NE. ¼, NW. ¼ or SE. ¼ of said Section 28, during said period, other than the work hereinbefore set out, he would have known of it, and that no work in addition to that hereinbefore described, was done or performed on said lands during said period, namely, from January or February, 1910, to about August, 1910.

Affiant further states that for the past seven years he has been working in and around the oil fields of Kern County, California, and that he has supervised the construction of numerous skeleton derricks such as were placed on the lands in question herein, namely, the skeleton derricks that were [71] erected on the NE. ¼, NW. ¼ and SE. ¼, Section 28, T. 31 S., R. 23 E., and that he has also observed the building of numerous such skeleton derricks; that it has been his experience and observation that a skeleton derrick such as was erected on each of the three quarter-sections above described, namely, the NE. ¼, NW. ¼, and SE. ¼ of Section 28, T. 31 S., R. 23 E., can, under ordinary circumstances, be constructed in about four days' time.

That by the term "skeleton derrick" as used in this affidavit, he means the bare skeleton of the derrick, without any engine-house, belt-house, bull-wheel, or calf-wheel.

E. W. BAILEY.

Subscribed and sworn to before me at Taft, California, this 7th day of December, 1915.

[Seal] R. B. WHITTEMORE,
Notary Public. [72]

Affidavit of O. L. Goode.

State of California,
County of Kern,—ss.

O. L. Goode, being first duly sworn, deposes and says:

That he is a citizen of the United States and over the age of 21 years, and that his postoffice address is Taft, California.

That from August, 1909, to July or August, 1910, he was engaged driving teams and hauling for his brother, O. P. Goode; and that during the period mentioned, namely, from August, 1909, to July or August, 1910, he hauled oil with said O. P. Goode's teams from what was then known as the Hawaiian lease, about one-half mile west of Fellows, California, to Mays No. 1 well on Section 28, Township 31 South, Range 23 E., M. D. M.

That affiant is not familiar with the location of the four quarter-sections of said Section 28, and is unable to state of his own knowledge the particular quarter-section of said section upon which the well above mentioned, and known as Mays No. 1 well, is

situated, but that during the period above mentioned, namely, from August, 1909, to July or August, 1910, no other wells were being drilled, and no drilling work of any kind or character was being performed upon any land within a radius of less than one and one-half miles from the location of the well that was known as Mays No. 1 well on Section 28, T. 31 S., R. 23 E.

That during the entire period from August, 1909, to July or August, 1910, this affiant was to Mays No. 1 well on Section 28 on an average of twice each week, and by reason of such visits to and upon the said land was in a position to observe whether or not any other drilling work was being done on lands in the vicinity of the well known as Mays No. 1 well; and that [73] if any drilling work had been done on said Section 28, or within a radius of one and one-half miles of the well known as Mays No. 1 well, during said period, namely, from August, 1909, to July or August, 1910, he would have known of it.

That at the time this affiant first began hauling oil to Mays No. 1 well, which was in August, 1909, there were situated within a short distance of said Mays No. 1 well three skeleton derricks. That this affiant is unable to state when these skeleton derricks were erected, but that the said three derricks were completed and standing upon the land at the time he first visited the location of Mays No. 1 well on Section 28, in August, 1909.

That during the time this affiant was hauling oil to the well known as Mays No. 1 well on said Section 28, which was from August, 1909, to July or August,

1910, no drilling work of any kind or character was being done or performed at the locations of the three skeleton derricks that were situated near the well known as Mays No. 1 well on Section 28, as aforesaid, or at any of them, and that the only drilling work that was being carried on in the vicinity of said Mays No. 1 well on Section 28, during the period from August, 1909, to July or August, 1910, was the drilling work on the said Mays No. 1 well.

O. L. GOODE.

Subscribed and sworn to before me this 6th day of December, 1915, at Taft, California.

[Seal] R. B. WHITTEMORE,
Notary Public. [74]

Affidavit of Silas L. Gillan.

United States of America,
Northern District of California,
State of California,—ss.

Silas L. Gillan, being duly sworn on oath, deposes and says:

I am a citizen of the United States over the age of 21 years. I am a graduate mining engineer and during most of the period of the last five years I have been engaged in the California oil fields as a mineral inspector of the General Land Office of the United States, and as such have examined and reported to said General Land Office as to the conditions of, and development work being carried on in, said oil fields.

I visited the NE. ¼ of Section 28, Township 31 South, Range 23 East, M. D. M., on the 7th day of

December, 1915. At said time I found on said quarter-section eight wells producing oil and one well producing gas under strong pressure. From seven of said wells oil was being pumped and from one of said wells oil was flowing without being pumped.

SILAS L. GILLAN.

Subscribed and sworn to before me this 9th day of December, 1915.

[Seal] C. W. CALBREATH,

Deputy Clerk U. S. District Court, Northern District of California. [75]

2. AFFIDAVITS OFFERED BY DEFENDANTS, J. M. McLEOD AND CONSOLIDATED MUTUAL OIL COMPANY. [76]

Affidavit of J. M. McLeod.

United States of America,
Southern District of California,
Southern Division,
County of Los Angeles,—ss.

J. M. McLeod, one of the defendants above named, being first duly sworn, deposes and says:

1. That he resides at Los Angeles, California, and that his postoffice address is 519 W. P. Story Building, in that city.

2. That it is not true, as alleged in paragraph II of the complaint, that for a long time prior to or on the 27th day of September, 1909, or at any time since said date, the plaintiff has been or now is entitled to the possession of the petroleum or mineral oil or gas lands particularly described in paragraph II of

said complaint, or of the oil, or petroleum gas, or other minerals contained in said land;

2a. It is not true that the President of the United States on the 27th day of September, 1909, or at any time, withdrew or reserved all or any part of the land in the complaint described, from mineral exploration or from location, settlement, selection, filing entry, patent occupation, or disposal under the mineral or nonmineral laws of the United States. It is not true that since said date or at any time said lands have not been subject to exploration for mineral oil, petroleum or gas, or occupation, or the institution of any right under the public land laws of the United States.

3. It is not true that in violation of the proprietary or any rights of the plaintiff, or in violation of the laws of the United States or lawful orders or proclamation of the President of the United States, or in violation of the order of withdrawal of September 27, 1909, [77] the defendants or any of them entered upon said land at any time subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum or gas, but, on the contrary, he states the fact to be as hereinafter set forth.

4. It is not true that the defendants had not acquired any rights on or with respect to said land on or prior to September 27, 1909. It is true, as alleged in Paragraph VI of the complaint, that after the order of withdrawal of September 27, 1909, there was produced petroleum and gas from said land, but it is not true that entry upon said land for the purpose

of producing said petroleum or gas was made subsequent to September 27, 1909, but, on the contrary, such entry was made thereon in conformity with the mining laws and regulations of the plaintiff, prior to said date, and that at said time deponent and those claiming through him were *bona fide* occupants of said land, and were then actually engaged in the diligent prosecution of work thereon, looking to the discovery of oil or gas therein, and such work was continued diligently and in good faith thereafter until such discovery.

5. It is not true as alleged in paragraph VII of the complaint, that the defendants or any of them are trespassing upon said land or any part thereof. It is not true, that any oil or gas is being wrongfully sold or converted, or has at any time been wrongfully taken, sold or converted by any of the defendants from said land or any part thereof; neither is it true that any trespassing or waste has been or will be committed on said land or any part thereof, to the irreparable or any injury of the plaintiff. Responsive to said paragraph VII of the complaint, deponent states that he is not advised as to the policies of the plaintiff with respect to conservation, use or disposition [78] of said land, or the petroleum oil or gas contained therein, except as such policies are indicated by the mining laws and regulations of the complainant, and as to such laws and regulations deponent and his predecessors in interest in said land have in all respects and at all times fully complied therewith.

6. It is true that deponent claims a right in and to said lands, and in and to the oil, petroleum and gas extracted therefrom, and to the proceeds thereof. It is not true that such claim is derived directly or otherwise from any pretended notice or notices of mining locations, or by conveyances, contracts or liens, directly or otherwise from any pretended location, but, on the contrary, such claim is based upon the facts hereinafter stated.

7. It is not true that none of the defendants, nor any person or corporation from whom they have derived any interest in said lands, was on the date of the order of withdrawal on the 27th day of September, 1909, a *bona fide* occupant or claimant of said lands, or in the diligent prosecution of work leading to the discovery of oil or gas therein, but the fact is as herein otherwise stated.

8. It is not true as alleged in Paragraph XII of said complaint, that the location notice therein referred to was filed or posted by or for the sole or any benefit of this defendant, or for the benefit of some one else other than the persons whose names were used in said location notice. It is not true that the names of said locators were used to acquire more than twenty acres of mineral land in violation of the laws of the United States. It is not true that the names used in said location notice were not *bona fide* locators or that any of them was without any interest in said location notice; it is true that [79] their names and each of them were used to enable them and each of them to secure said land or patent there-

for; it is not true that any of said persons was a dummy, but on the contrary, said location was made by the persons in said location mentioned, in good faith, by and for the mutual benefit of said locators, and in conformity with the mining laws of the United States.

9. It is not true, as alleged in paragraph XII, that the defendants have no right, title or interest in or to said land or any part thereof, or any right, title or interest in or to the petroleum, mineral, oil or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey or dispose of the petroleum or gas so extracted, but, on the contrary, deponent states that by virtue of the complainant, he is now, and at all times since said mesne conveyance has been, and his predecessors in interest were, lawfully entitled to the possession of said premises, and every part thereof, and that such of the codefendants claiming by or through this defendant are likewise entitled to the possession of said land, and to the minerals contained therein, and to the proceeds thereof.

As a further response to said application for receiver, deponent states that prior to January 1, 1909, the land in the complaint mentioned, to wit, the northwest quarter of Section 28, township 31 south, range 23 East, M. D. B. & M., in Kern County, California, was public land of the United States, open to location and appropriation under the laws of the United States relating to lands commonly known as "placers," and on said date Herbert M. Walker, H.

E. Bashore, R. B. Welch, F. H. Roamine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz and William [80] Mahn, each being then a citizen of the United States, duly located, according to the mining laws and regulations of the United States, and the laws of the State of California, said northwest quarter of said section 28, as the Texas Placer Mining Claim, by marking said claim upon the ground so that the boundaries thereof could be readily traced, by recording a notice of such location, and by entering into the occupation of said land and every party thereof. That thereafter deponent by mesne conveyances duly executed and delivered, for value and in good faith, succeeded to the rights of said locators, and became and now is the record legal owner of said lands and of the whole thereof.

That since said first day of January, 1909, deponent and his predecessors in interest have held, possessed and improved the land above described under the mining laws aforesaid, claiming openly, notoriously and continuously to own the same, exclusive of the rights of all other persons, and adversely thereto; that during all of said time, deponent and his predecessors in interest have paid all the taxes, state, county and municipal, which have been levied and assessed upon said land.

That on and for a long time prior to the 27th day of September, 1909, deponent and his predecessors in interest were, and ever since said date have been, *bona fide* claimants and occupants of said land, in the diligent prosecution of work leading to discovery,

and to the development and production of petroleum or gas therein. That said work was commenced by lessees and claimants under deponent in or about the month of [81] August, 1909, and was thereafter diligently continued thereon. That for the particulars of such development work, and especially as to the particulars with respect to the efforts and expenditures of said occupants in obtaining a supply of water with which to operate said claim, deponent refers to the affidavit of the codefendant filed herewith. That said lands were and are situate in a desert country, far from any source of water supply, and in the year 1909, and prior and subsequent thereto, human existence thereon was precarious and the pursuit of any drilling or other operations impossible without an assured supply of water. That long prior to the 27th day of September, 1909, and during said year 1909, work was commenced and proceeded with by affiant and those claiming under him, which was adapted to and intended for the drilling for and development of oil upon said premises, which were and are oil-bearing lands; that said work was proceeded with to the utmost extent possible without further supply of water, and that affiant and his associates on or about the first day of September, 1909, and prior thereto, and continuously thereafter, diligently, energetically and vigorously, and by every means within their power, labored toward the procurement and transportation to said land and making available thereon of sufficient water to proceed with the work so commenced thereon as aforesaid,

and that everything done by affiant and his associates and those claiming under him, toward the procuring of said water supply, was with the purpose and intention of making water available, and such water was thereby made available for the continuance of the drilling for and development of oil on said premises.

That affiant on or about the 25th day of June, 1909, made an agreement with James W. Mays covering a certain portion of [82] the premises described in the complaint herein, and at the time said agreement was made, this affiant was familiar with all the conditions surrounding the said property and the difficulties to be surmounted in proceeding with development work thereon; that at the time of the making of said agreement this affiant was anxious that the work of exploring and drilling for oil upon said premises, and particularly the portion thereof described in said agreement made with said James W. Mays, should be proceeded with with the utmost dispatch and that affiant kept closely in touch with the operations of the said Mays, and continuously and constantly insisted that the development work upon said property should be diligently proceeded with, and affiant states that said work was so proceeded with by the said Mays with the utmost diligence possible under the circumstances then existing, and in view of the great difficulties encountered, and particularly in view of the difficulty of obtaining a supply of water adequate for the purpose of proceeding with drilling; that the same diligence which charac-

terized the conduct of said Mays also characterized the operations of the successors of said Mays under said contract aforesaid.

That prior to and at the time of the passage and approval of the Act of Congress entitled, "An Act to authorize the President of the United States to make withdrawal of public lands in certain cases," approved June 25, 1910 (Chap. 421, U. S. Stats., p. 847), the development work above referred to was actually and actively being carried on upon said land under the *bona fide* location claims aforesaid, and was diligently continued to completion and discovery of oil upon said placer location. [83]

That on the northwest quarter of said section 28, three wells were drilled, one 2,978 feet deep, one 3,430 feet deep and one 2,884 feet deep; that in and by two of said wells drilled as aforesaid, a deposit of petroleum was discovered and developed; that in and by the third well drilled as aforesaid, a deposit of gas was discovered and developed, which for a time produced gas at the rate of about 1,600,000 cubic feet per day, but which at the time of the application for patent hereinafter mentioned, had decreased and then produced not in excess of 900,000 cubic feet per day. That deponent through said agencies expended upon said northwest quarter of said section twenty-eight in and about the development of said oil and gas, a sum in excess of $95,000.

That the entry aforesaid, and the development of said land, were made with the full knowledge of the complainant herein;

That heretofore, and in or about the month of June, 1914, deponent filed in the United States Land Office at Visalia, California, his application for patent, embracing the quarter-section in the complaint described, and also other land, which proceeding was entitled, "In the Matter of the Application of J. M. McLeod for patent to the Texas Consolidated Placer Mining Claim, embracing the northwest quarter, the northeast quarter and the southeast quarter of section 28, township 31 south, range 23 east, M. D. B. & M. in Kern County, California, and containing an area of 480 acres," which application was designated as Mineral Entry, Serial No. 04655. That notice of said application was published by the Register of said Land Office as required by law. That deponent complied with the mining laws and regulations of the complainant in that behalf enacted, [84] filed his application in said land office to purchase said premises, and paid to the Register of said Land Office the amount of the purchase price thereof provided by law; that thereafter and on the 31st day of October, 1915, there was issued to deponent by Frank Lanning, Register of the said United States Land Office, his final certificate in words and figures following:

REGISTER'S FINAL CERTIFICATE OF ENTRY.

SERIAL NO. 04655.

RECEIPT NOS. 1270754.

RECEIPT NOS. 1493022.

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

At Visalia, California, October 31, 1914.

Mineral Entry, No. 04655.

IT IS HEREBY CERTIFIED That in pursuance of the provisions of the Revised *States* of the United States, Chapter VI, Title XXXII, and legislation supplemental thereto, J. M. McLeod whose postoffice address is 519 W. P. Story Building, Los Angeles, California, by U. T. Clotfelter, his Attorney, whose postoffice address is 409 *Kerkhoff* Building, Los Angeles, California, has this day purchased those placer mining claims known as the:

TEXAS CONSOLIDATED PLACER MINING CLAIMS; embracing the NW. ¼, NE. ¼ and SE. ¼ of Sec. 28 T. 31 s., R. 23 E., M. D. M.

Said placer claims as entered, embracing 480 acres in the County of Kern, State of California, as shown by the plat and field-notes of survey thereof, for which said party first above named this day made payment to the register in full, amounting to the sum of Sixteen Hundred ($1600) Dollars. [85]

NOW, therefore, be it known that upon the presentation of the certificate to the Commissioner of the General Land Office, together with the plat and field-

notes of survey of said claims and the proofs required by law, a patent shall issue thereupon to the said J. M. McLeod, if all be found regular.

(Signed) FRANK LANNING,
Register.

Visalia, California, October 31, 1914.

I HEREBY CERTIFY, THAT the issuance of this final certificate was delayed from September 19th, 1914, till October 31, 1914, by reason of an erroneous understanding on the part of the undersigned that the affidavit of publication had not yet been filed in this matter.

FRANK LANNING,
Register.

That said certificate has not at any time since been revoked, but is in full force and effect.

J. M. McLEOD.

Subscribed and sworn to before me this 27th day of December, 1915.

BERTHA TRAWEEK,
Notary Public in and for the County of Los Angeles, State of California. [86]

Affidavit of Alfred G. Wilkes.

State of California,
City and County of San Francisco,—ss.

Alfred G. Wilkes, being first duly sworn, deposes and says:

I became a director of the Mays Oil Company on the 16th day of March, 1909. I continued to be such director thenceforth and during the month of September, 1909, the date of the so-called "Taft

Withdrawal." I was thoroughly acquainted with and familiar during all of said time with Section 28, Township 31 South, Range 23 East, M. D. B. and M. and had and have actual knowledge regarding the possession thereof and with the work that went on on said section during the whole of said period, and particularly with the nature and extent of the work that was actually in progress on said section upon the date of the said Taft withdrawal, to wit, September 27, 1909. I was also acquainted with the facts regarding the possession of said Section, and knew that the work that was done on said section after said order of withdrawal was made and up to the end of October, 1909.

The said Mays Oil Company from and after the 25th day of June, 1909, was in the actual, peaceable and exclusive possession of said Section 28, save and except the North half of the Northwest quarter, and the south half of the southwest quarter of the said section;

That said Mays Oil Company was organized in the early part of March, 1909. It acquired the possession of the aforesaid portions of the said Section 28 by virtue of a lease dated June [87] 25, 1909, executed by one J. M. McLeod to one James W. Mays, who was the attorney of said Mays Oil Company, and who held said lease for the benefit of said Mays Oil Company. A synopsis of said lease is hereunto annexed, marked exhibit "A," and is hereby referred to for further particulars.

That deponent, as such director of the Mays Oil Company, was thoroughly familiar with and knew

the intentions of the said corporation, and knows that it was the intention of the said corporation from the moment it acquired its aforesaid leasehold interest in said property to proceed diligently with the sinking of an oil well upon each of the four quarters of said section;

That to that end, and for the purpose of drilling said wells economically, it was planned by said Mays Oil Company that bunk-houses, cook-house, etc., and the pipe-line to bring water for the drills, should be so constructed and situated near the center of the said Section 28 that the work of drilling the said four proposed wells might be carried on from the one camp;

That not only was it the intention of said corporation to proceed as aforesaid for its pecuniary benefit, but it was bound so to do by the terms of the lease under which it held said property. In and by the said lease it was covenanted and agreed that the lessee would, on or before the 12th day of July, 1909, "erect a suitable derrick for drilling an oil well upon the following four parcels of land, to wit: S. ½ of the NW. ¼, S. ½ of the NE. ¼, N. ½ of the SW. ¼, N. ½ of the SE. ¼ of Section 28, Township 31 South, Range 23 East, M. D. B. & M. and will within said period erect all bunk-houses that may be necessary for the drilling operations on said parcels of land required by this agreement." It was further provided in said lease that "on or before the 12th day of August, 1909, said party shall install a complete [88] standard drilling outfit including rig and tools at one of said drilling outfit,

commence the actual work of drilling for oil with said rig and tools at the point where the same is installed as hereinabove provided, and will continue drilling operations diligently with rig until oil is struck in quantities deemed paying quantities by the second party, or further drilling becomes useless or unprofitable in the judgment of the second party."

That pursuant to the said obligations contained in said lease, the said Mays Oil Company proceeded with the work which the lessee had agreed to perform, and which it as aforesaid had planned to do. To that end a suitable skeleton derrick for drilling an oil well was erected upon each of the said four parcels of land, and all buildings and structures necessary as a camp and plant for the drilling operations on said four parcels of land were constructed.

It was obvious at the time that the said lease was taken by the said Mays Oil Company that it would not be possible to drill more than one well at a time, because of the condition of the water supply in the said district at the said time. The only available water as aforesaid was that supplied by a concern called the Stratton Water Company;

That at the time said Mays Oil Company took said lease, and during all of the period of time between the entry of the said Mays Oil Company upon the said Section 28 as aforesaid in June, 1909, and the 31st day of October, 1909, the said Stratton Water Company had but three producing water wells, two of which were of but little value, and that, as deponent has since learned, the total quantity of water

which the said wells were [89] capable of producing during all of said period did not exceed 3,300 barrels per 24 hours, whereas, the demand upon said wells was largely in excess of said supply;

That at the time of the entry of said Mays Oil Company into possession of said portions of said Section 28 in June, 1909, said Stratton Water Company was already attempting to supply customers whose demands were far in excess of the possible supply of the said wells, and said Mays Oil Company well knew that without more water than it was possible to then get from said Stratton Water Company, it would be a very difficult task to drill even one well, although the utmost care and the most economical use possible of such water as it could obtain from said Stratton Water Company should be taken and made;

That the wells of the said Stratton Water Company were situated about five miles from the center of the said Section 28, and that there was no other natural water supply of any kind or character from which Mays Oil Company could have purchased or otherwise procured water for drilling purposes anywhere within forty-five miles, or thereabouts, of the said Section 28;

That during all of the said period of time, in order to procure sufficient water even for drinking and cooking purposes, it was necessary to send a distance of seven miles from said section, and haul the same by teams to the said camp on said section;

That the conditions regarding water for use on said Section 28 were well known both to said Mc-

Leod, the lessor, and to said Mays, and to said corporation Mays Oil Company at the time said lease, Exhibit "A," was made; **[90]**

That by diligent effort a standard drilling outfit was completed as called for by said lease in the early part of August, 1909, and drilling was commenced in August, 1909, on the north half of the southwest quarter of said Section 28, and was proceeded with so that by September 1, 1909, the said well was down 290 feet; on September 5, 1909, the same was down 590 feet; during the following week ninety feet were drilled, and between September 12th and September 30, 1909, an additional 170 feet were drilled. The total depth of said well on September 30, 1909, was about 850 feet;

That during all of said time it was the hope and expectation of the said Mays Oil Company that the water supply of the said Stratton Water Company would be increased, the said Stratton Water Company having made repeated representations to that effect to the said Mays Oil Company;

That among the representations so made was the representation that the said Stratton Water Company was installing at great expense a new compressor which would "mean better service for everybody," and that the boiler plant of the said water company was to be replaced with three 100-horsepower, high-pressure boilers, and deponent learned that during the said period of time ending as aforesaid with the 31st day of October, 1909, the said Stratton Water Company was in fact making diligent efforts to increase its water supply. That be-

cause of the fact that the said corporation represented itself to be making great outlays in that direction, and that it would be able to increase the said supply, the Mays Oil Company hoped and believed that the said water supply would be increased, and it was at that time the intention of the said Mays Oil Company, as fast as the said water supply was increased, to start in and drill more wells **[91]** upon the said section at the places where skeleton derricks had been erected as aforesaid;

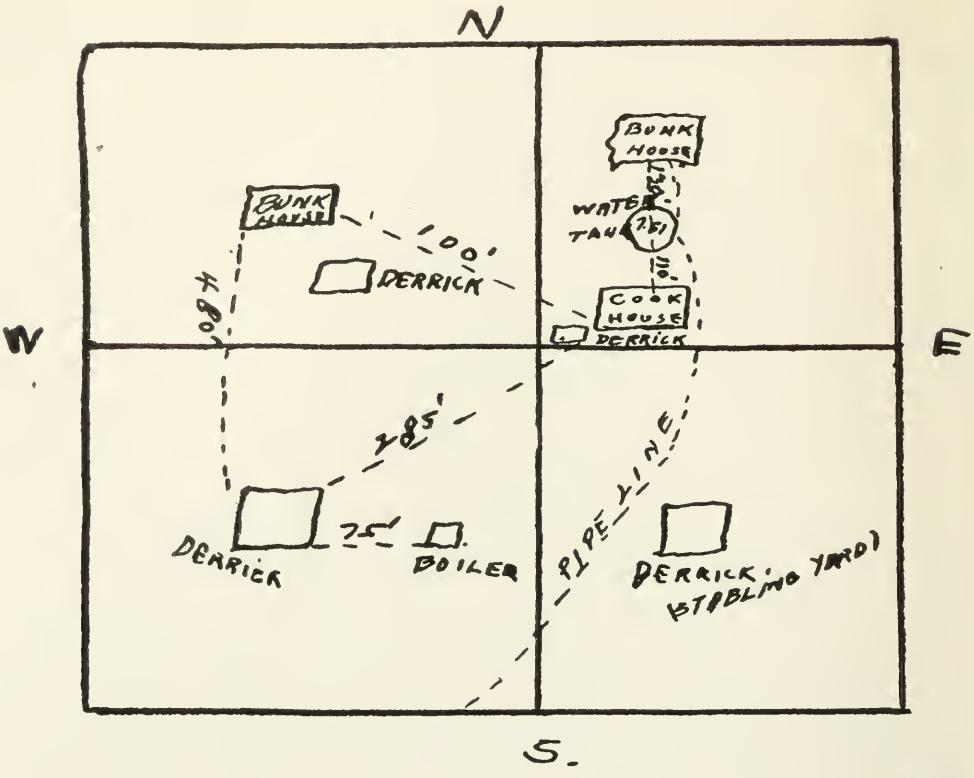
That the said skeleton derricks so erected were suitable for the purpose and were ready for rigging, and that it was the intention of said Mays Oil Company to properly equip and make use of each of said derricks, and to drill wells with the same just as fast as it could procure sufficient water for the purpose, but in the event that it was not possible to secure a further water supply than was sufficient for drilling one well at a time on the said Section 28, then it was the intention of said corporation to finish said first well, and thereafter to use the said water supply immediately in the work of drilling a second well, and so on, not only until the said four wells were drilled and completed, but thereafter as rapidly as wells additional to the said four wells could be drilled. It was at that time estimated that oil in paying quantities would be discovered in such well in from thirty to ninety days after drilling should commence;

That it would have been an easy matter for the said Mays Oil Company, and those under whom it claimed, had it or they been proceeding in bad faith,

or had it or they desired to make a mere showing of work in lieu of real development work, to have rigged up said three additional derricks and have drilled four wells of 200 feet depth, or thereabouts, in the same period of time prior to the said 27th day of September, 1909, in which it as aforesaid drilled said 850 feet, or thereabouts, in the said one well, but that at no time did the said Mays Oil Company, or those under whom it claimed, intend or attempt to make any mere showing of work; but said company was proceeding actually in good faith in its own behalf, and in compliance with the obligations to those under whom it claimed, with all of the rapidity possible under the circumstances as to water in the actual development of the said property; **[92]**

That the tract of land so leased to the said Mays Oil Company in said Section 28 was in the actual *bona fide*, exclusive possession and occupancy of the said Mays Oil Company prior to and on and after the said 27th day of September, 1909; that at the moment when said Taft Withdrawal order was made, the said company was in diligent prosecution of work leading to the discovery of oil on said whole tract, and on each and every governmental subdivision contained therein.

The following is a map upon which is depicted with approximate accuracy the four quarters of the said section, and the following structures which were existing on the said land at the date of the said Taft Withdrawal:



[93]

1. In the southwest quarter of said section, near the center thereof, was the aforesaid standard derrick complete. Drilling had been going on there for about a month, when said Taft Withdrawal was made. There was also thereon the pipe-line aforesaid which connected with the said Stratton wells about four miles to the southwest, which said pipe-line continued also into the east and north half of the said section. There was also a return pipe-line leading from or near the boiler near said derrick to the tank hereinafter referred to, which was in the northeast quarter of said section.

2. In the northwest quarter of said section there was a bunk-house in which some of the men engaged upon the said work had their beds, and where they slept. There was also the aforesaid skeleton derrick in place and properly set up, and ready to be

rigged with the necessary tools for drilling; that said skeleton derrick could have been rigged with tools and started within from one to four days' time, had there been sufficient water.

3. On the northeast quarter there was a tank into which the aforesaid pipe-line extended and discharged, and there was as aforesaid a return pipe-line toward the said oil well. There was also a similar skeleton derrick all set up and ready to be rigged up and used. There was also a cook-house, consisting of a kitchen, dining-room and bedroom. In this building the food of the crew engaged in drilling was prepared, and they had their meals there. Said cook-house was constructed and completed in August, 1909, and was purposely constructed with capacity to accommodate forty men, or thereabouts, and with the expectation that as the said work progressed the crews to be employed in drilling the various proposed wells would number as high as forty men. There was also another bunk-house in which some of the crew slept. **[94]**

4. On the southeast quarter there was the skeleton derrick erected as aforesaid, all set up and ready to be rigged for drilling. The said pipe-line also crossed into said southeast quarter. The teams hauling freight to the camp were put up and fed on said quarter near said derrick, and the same was also used as a stabling yard for the company's team.

That on the said 27th day of September, 1909, there were six men actually employed by the said Mays Oil Company upon said property, and actually

living thereon and occupying and using the said buildings and premises;

That in addition to the said six men, there were teamsters employed by the company as they were needed in hauling provisions and freight to and from the grounds, and these teams and their drivers often remained over night at the camp;

That the said company at the date of said Taft Withdrawal was expending a large amount of money, and intended to continue to expend a large amount of money in the development of the said properties so leased to it, and had actually expended in physical structures, equipment and labor on the said work between the time that the said work commenced and the date of the said Taft Withdrawal about Twenty Thousand ($20,000) Dollars;

That no other person or persons were in occupation of the said lands, and the said Mays Oil Company had the actual *possessio pedis* thereof;

That the tools, supplies and appliances were adequate for the work; that the only thing inadequate or short was the water supply, and that the said water supply was utilized to the fullest extent possible in the sinking of the said well, and the same, so far as it had gone on September 27, 1909, had been successfully sunk without serious mishap or delays from the time that the said drilling began as aforesaid; [95]

That the men employed were skillful men, and were paid high wages for their services, and the driller, prior to said 27th day of September, 1909,

was offered and subsequently paid a large bonus in stock of the corporation for his successful work, said bonus being offered to induce him to diligent effort;

That the four wells which as aforesaid it was proposed to sink as rapidly as the water supply would permit were all to be sunk within a stone's throw of the center of said section, and each would have used, and later on did use, the water supplied through said pipe-line.

Upon the question of diligence, this deponent further says that the work which the said Mays Oil Company was diligently prosecuting on said section was work "leading to the discovery of oil" on each of the said four quarters of said section at the time of the making of the said Taft Withdrawal order. In that behalf this deponent further says:

That the instructions of the said Mays Oil Company to its employees during all of the said times had been and were to proceed with the utmost diligence in the sinking of the said well in the southeast quarter of Section 28, and the drilling of the said well was in fact proceeded with just as diligently and as rapidly as work of that character could be proceeded with in view of the unsatisfactory water supply;

That it was believed by the said Mays Oil Company that oil would be found in each proposed well, but this could not be definitely determined until a discovery in one of said wells was made. A discovery of oil in the well where said drilling was in progress on September 27, 1909, in paying quanti-

ties, would for all practical purposes have made it certain that each of said four quarter-sections contained oil, and the labor being done on said lands on said day tended to the development **[96]** of the whole thereof, and tended to determine their oil-bearing character;

That at no time during the said work was the failure to proceed with drilling on each of the said quarter-sections due to any other reason than the one fact as aforesaid that the water supply was inadequate. The said company had the means to keep up and equip all four of said skeleton derricks and do the necessary drilling; it had the belief that the oil was there; it had the desire to develop it as quickly as possible; the market was satisfactory, and offered large profits to the company if oil could be discovered in paying quantities, and it was the earnest effort of the said corporation during all of said time to proceed with drilling upon all four of the quarters of the said Section 28, and the said drilling would in fact have been proceeded with, and would have been in actual progress on each of the said four quarter-sections of said section at the time of the said Taft Withdrawal but for the aforesaid shortage of water; that as it was, the said Mays Oil Company was doing the utmost that was physically possible in the prosecution of work leading to a discovery of oil upon all of the four quarters of the said Section 28 at the time that the said Taft Withdrawal went into effect;

That the same diligence continued, and the same

state of affairs as to possession, expenditure and drilling continued in the same manner after the said Taft Withdrawal as during the months previous thereto, and the possession of the said company of all of said lands so leased to it continued to be exclusive, and the occupation and use of the said lands by the said company continued in the same good faith, and was accompanied by a very large expenditure and outlay of money continuously until the end of October, 1909, at which time Mr. Charles A. Sherman took [97] charge of the property in behalf of the corporation;

That at the said time, this deponent ceased to have any connection with the management of the said property, but deponent was frequently upon said property during several months after Mr. Sherman's arrival, and observed that work thereon was being proceeded with in the same diligent and continuous fashion as formerly.

(Signed) ALFRED G. WILKES.

Subscribed and sworn to before me this 27th day of December, 1915.

ALICE SPENCER,

Notary Public in and for the City and County of San Francisco, State of California. [98]

Exhibit "A."

J. M. McLEOD,

First Party,

to

JAMES W. MAYS,

Second Party.

Dated June 25, 1909.

Recites: For and in consideration of the sum of $1.00, Gold Coin of the United States to him in hand paid by the second party, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter expressed and by the second party to be kept and performed, the first party has demised and leased and does hereby demise and lease to the second party the land situate in Kern County, State of California, described as the S. ½ of the NW. ¼, the NE. ¼, the N. ½ of the SW. ¼ and the SE. ¼ of Section 28, Township 31 South of Range 23 East, Mount Diablo Base and Meridian, and have granted, demised and leased and by these presents does grant, demise and lease to the second party all the oil, gas and other hydro-carbons and minerals of every kind and character whatsoever in and under said lands with covenants of general warranty for the quiet enjoyment and peaceable and exclusive possession of the premises by the second party and that the first party has the sole right to convey the premises with the exclusive right to construct and maintain telephone, telegraph and pipe-lines and roadways leading from adjoining lands on and across the premises, the right to erect and maintain buildings, derricks and other structures useful and necessary for boring, drilling and excavating, for handling oil, gas and other hydro-carbons on said premises and the right to the free use of sufficient water, gas, oil and hydro-carbons from the premises for the proper operation of the lands herein leased and the right to remove during, or after the term of this lease and grant, all

[99] the machinery, tools, pipes, tanks, appurtenances and property placed or erected thereon by the second party.

To Have and to Hold, to the second party the whole or any part of said premises for the term of twenty years from the date hereof and as much longer as oil is produced therefrom in quantities deemed paying quantities by the second party.

The second —— agrees on or before the 15th day of July, 1909, to erect a suitable derrick for drilling an oil well upon the following four parcels of land, to wit:

S. ½ of the NW. ¼, S. ½ of the NE. ¼, N. ½ of the SW. ¼, N. ½ of the SE. ¼ of Section 28, Township 31 South, Range 23 East, M. D. B. & M., and will within said period erect all bunk-houses that may be necessary for the drilling operations on said parcels of land required by this agreement.

On or before the 12th day of August, 1909, said party shall install a complete standard drilling outfit including rig and tools at one of said derricks on Section 28, and shall promptly upon the installation of said drilling outfit, commence the actual work of drilling for oil with said rig and tools at the point where the same is installed as hereinabove provided and will continue drilling operations diligently with rig until oil is struck in quantities deemed paying quantities by the second party or further drilling becomes useless or unprofitable in the judgment of the second party.

The second party further agrees that within thirty days after oil is discovered in quantities deemed pay-

ing quantities by the second party in either of said wells *it* will begin the actual work of drilling for oil on each of the three remaining halves of quarter-sections of the section in which such discovery is made and at the points where the three remaining derricks [100] on said sections have been erected as hereinabove provided and will continue such drilling diligently until oil is struck in paying quantities deemed such by the second party or further drilling becomes in the judgment of the second party useless or unprofitable.

The first party further agrees that upon the discovery of oil in quantities deemed paying quantities by the second party upon any quarter section of land hereinabove described, the first par*ties* will immediately make or cause to be made application to the Government of the United States for Letters Patent to said quarter-section of land and will pay one-half of all expenses of every kind which may be incurred in procuring such patent; and in the event of the failure of the first party so to do, the second party shall be and hereby is authorized on behalf of the first party, to apply or cause application to be made for such patent at the expense of the first party.

The second party shall deliver to the first party the one-eighth part of all oil produced and saved from said lands or from any part thereof prior to the purchase thereof by the second party pursuant to the option herein granted. Delivery shall be made upon the party of the land credited with the royalty.

The second party agrees that so long as any of said lands are operated by him under and pursuant to

this lease he will pump diligently all producing wells except when the value of oil shall be less than forty cents a barrel at the well and except when in the judgment of the second party, the quantity of oil produced by such pumping operations is not sufficient to justify the continuance of such pumping.

It is further understood and agreed that the drilling operations of the second party hereunder shall be suspended at the option of the second party, if at any time the value of oil [101] shall be less than forty cents a barrel at the well, or if the quantity of oil produced from producing wells on said lands or any part thereof shall be such that in the judgment of the second party further development of said lands shall be unprofitable.

Except as herein otherwise provided, the second party shall have the right to remove during the life of this agreement or within ninety days after the termination thereof by giving sixty days written notice, all the machinery, tools, pipes, tanks and appurtenances and property placed and erected thereon by the second party.

The second party shall have the right to surrender all or any one or more of the four parcels of land above described at any time within one hundred and twenty days after a first well drilled by the second party on any of said parcels of said land has commenced pumping. And the second party shall have the option at any time within any such one hundred and twenty days of purchasing all or any one or more of the above-described four parcels of land at the purchase price of $250 per acre.

The second party shall have the further option of designating at any time within any one hundred and twenty days after a first well on any one of said four parcels has commenced pumping, whether it elects to continue this lease as to such parcel or as to all or any of the parcels herein described and thereafter the second party shall have the option at any time during the term of such lease to purchase the parcel or parcels as to which it has so elected to continue said lease, at the purchase price of $250.00 per acre. Upon the purchase of any parcel or parcels of said land this lease shall forthwith cease as to such parcel or parcels.

In the event that the second party surrenders the lands herein demised or any parcel thereof, the first party shall have [102] the right to purchase the inside casing of any well on any of said parcels of land at seventy-five per cent of the cost of such casing on the land, and before installation in the well, provided, however, that the first party as a condition of the right to purchase said casing shall within ten days after receipt of written notice of surrender of the second party of said parcel or parcels, signify his intention to exercise the option to purchase said casing.

The second party agrees during the term of this lease, acts of the elements, the public enemy, strikes or other inevitable causes excepted, to run one string of tools continuously, and finish an average of one well each year on each the N. ½ of the NE. ¼, S. ½ of the SE. ¼, and one well on the balance of said lease on said Section 28, held by the second party

pursuant to this lease until there shall be on each five acres of land so held one well; provided that nothing herein contained shall prevent the second party from drilling as many wells as he may elect on any parcel of said land.

The first party shall and hereby covenants and agrees upon the written demand of the second party made at any time within one hundred and twenty days after the first well has commenced pumping on any of said parcels and after final receipt by the United States Government shall have been issued in any patent application or applications prosecuted for such parcel, to convey to the second party by good and sufficient deed free of encumbrances such parcel upon the payment to the first party by the second party for the same at the rate of $250.00 Gold Coin of the United States for each acre of land so purchased by the second party in the exercise of its option under the provisions of these presents.

This agreement and the rights and obligations thereof shall [103] inure to and bind the respective successors and assigns of the parties hereto.

(Signed) J. M. McLEOD, (Seal)
(Signed) JAMES W. MAYS, (Seal)
Per A. G. WILKES,
Atty. in Fact.

Acknowledged in due form June 25, 1909, before C. L. Claflin, Notary Public, Kern County, California (no seal), by J. M. McLeod; also, on said day before same officer (no seal), by A. G. Wilkes, as attorney in fact of James W. Mays. [104]

Affidavit of Charles H. Sherman, December 27, 1915.

State of California,
City and County of San Francisco,—ss.

Charles H. Sherman, being first duly sworn, deposes and says:

On or about the 27th day of October, 1909, I arrived in the State of California from the East, and on the 30th day of October, 1909, I was upon Section 28, Township 31 South, Range 23 East, M. D. B. & M.;

At the said time I was employed by the Mays Oil Company as its general manager, and went upon the said section upon said date in the interests of said company, and as such general manager;

At the time of my arrival upon said section the said company was in the actual possession of a tract of land embracing the following described portions of said section, to wit: The Northeast quarter, the South half of the Northwest quarter, the North half of the Southwest quarter, and the Southeast quarter;

I went completely over the said properties and examined the boundaries thereof, and know that the said Mays Oil Company was on said day in the actual, peaceable possession thereof, claiming the same under James W. Mays, J. M. McLeod, and their predecessors in interest;

That on said day there were employees of the said Mays Oil Company other than myself living and working upon each and all of said governmental subdivisions which made up said tract of land;

That the said governmental subdivisions were con-

tiguous and that the possession of the said corporation, Mays Oil Company, on said day and ever thereafter was peaceable, open and [105] notorious and was not interfered with adversely at any time by any other person or corporation and that the same was a *bona fide* possession under a title founded upon written instruments purporting to convey the title;

That during the whole of said period from and after the arrival of deponent upon said property until the said Mays Oil Company disposed of its said holdings there were officers, laborers or employees of said corporation in physical possession of said property;

That from and after deponent's arrival upon said property he took charge of said premises and was upon each and every one of the aforesaid governmental subdivisions of said tract of land daily during the whole of the said period;

That until deponent's arrival on said property one Alfred G. Wilkes was the managing director of said property and in charge of the said property for said Mays Oil Company, and by the direction of the said Wilkes the possession thereof was delivered to this deponent as manager of said Mays Oil Company on the said date of deponent's arrival;

That the tracts of land hereinabove described, to wit: The northeast quarter, the south half of the northwest quarter, the north half of the southwest quarter, and the southeast quarter, of said Section 28 constituted a contiguous parcel of land made up of the aforesaid subdivisions and that the possession of said corporation, Mays Oil Company, extended to

each and every part of the said parcels;

That at the time of deponent's said arrival upon the said tract of land there were situated thereon the following described structures: Two skeleton derricks, one derrick fully rigged, equipped and in operation; two bunk-houses, one cook-house, consisting of a bedroom, kitchen, and dining-room, the latter capable of accommodating forty men; a water tank from [106] which a pipe-line extended for four miles or thereabouts to the wells of the Stratton Water Company, and a boiler, set up and in operation, a 25-barrel fuel-oil tank situate near and used in connection with said boiler. The brush had been cleared away from around the derricks and the different buildings. There was also a road which terminated at the northeast quarter of said section and which extended thence south through the whole of the southwest quarter of the said section, which said road was the road leading to the town of Taft about seven miles distant. There were piles of stove-pipe casing and 12½ inch casing, and a full equipment of drilling tools. At the derrick on the southeast quarter was the place for stabling the company's team and the teams used in hauling freight to the plant. Hay was stored therein. It continued to be used as a stabling place at all times in 1909 until a building for use as a stable was erected by the company thereon;

That the center of the said section was very near to the properties hereinabove described and that one or more of the structures hereinabove referred to was upon each of the several subdivisions of the said sec-

tion, and the whole was used as one camp and the possession of the premises was not confined or directed to one fractional subdivision thereof more than to another;

That all of said buildings or structures and said stabling place on such fractional subdivision which went to make up the said tract of land was actually in use in accomplishing the work of drilling upon the said property;

That the well being drilled on the said 30th day of October, 1909, when deponent arrived was situate near the center of Section 28, about 300 feet in a southwesterly direction from said center and was on the north half of the southwest quarter of said section; [107]

That a boiler had been erected and in place near the said derrick over the said well; that one of the bunk-houses was on the south half of the northwest quarter of said section, and the water tank, one of the bunk-houses and the cook-house were on the northeast quarter of the said section;

That the crew of men engaged in the said work of drilling the said well used both the said bunk-houses for sleeping purposes and ate at the aforesaid cook-house; that the water then in use was highly impregnated with sulphur, and while good enough for drilling purposes was not good for cooking or domestic purposes, and that in order to get drinking water and water for cooking purposes, it was necessary at said time to either bring the water in in tank-wagons from the town of Taft or to distill the said sulphur water;

That it was the duty of this deponent to keep the said drill running and the instructions given to this deponent were to proceed with all the diligence possible not only to complete the said well but to drill additional wells not only at the location of the aforesaid skeleton derricks which had been erected on said tract as aforesaid but also to proceed with the erection of further and additional wells as rapidly as water could be obtained and to procure water from any point where the same could be obtained in suitable quantities and at a cost within the bounds of reason;

That at no time after the arrival of deponent in California was the said company short of funds, but on said day and thenceforward there were abundant funds with which to proceed with the said work;

That deponent proceeded immediately to investigate the water situation at the said well and in the said district and [108] to devise means if possible to secure more water for the purpose of drilling. As a result of such investigation deponent learned almost immediately after his arrival upon said section as aforesaid that the supply then being obtained from the said Stratton Water Company was inadequate for the purpose of proceeding properly with the said drilling operations at said one well. That as will hereinafter more fully appear the said well was drilled under great difficulties because of lack of sufficient water; that it reached the depth that it did reach only as a result of the utmost precaution and care in husbanding the water supply that was available and that the said well was ultimately lost be-

cause of the insufficient supply of water for drilling;

Deponent further discovered that the total water supply of the said Stratton Company was utterly inadequate to meet the demands upon it of the said district and particularly of customers located nearer to the wells of said water company than was the said Mays Oil Company; that the companies so located had been customers of said water company prior in time when the said Mays Oil Company became a customer;

Deponent further discovered that there was no other water supply in the district, and that in order to pipe water into the said district from any natural source it would then have been necessary to go a distance of forty miles or thereabouts; that the cost of bringing such water such a distance was prohibitive;

That to the town of Taft situate about seven miles from the said works of the said Mays Oil Company on Section 28 water was brought in for drinking and domestic purposes in tank cars by the Santa Fe Railroad Company and was carried for that purpose a distance of forty miles and upwards to said town of Taft; **[109]**

That the only other water within said district was brought in by the Santa Fe Railroad Company to a point about eight or ten miles distant from the said Section 28 and was there used by the said Santa Fe Railroad Company for its own purposes; that deponent soon after his arrival in the said field called upon the officials of the said Santa Fe Railroad Company and to that end interviewed the employees of the said company in charge of said water, includ-

ing a Mr. Barber and a Mr. Mays, who were superintendents in charge thereof, and later interviewed Mr. Ripley, son of the president of the said road, who was one of the managing agents in charge of the said water, with a view to purchasing from the said Santa Fe Railroad Company a sufficient water supply to supplement the amount required for satisfactory drilling of the said well then under construction and also to enable the said Mays Oil Company to drill additional wells upon the said tract of land of which it was in possession as aforesaid and operate drills simultaneously at the site of the derricks then upon the said tract of land; that the said Santa Fe Railroad Company refused to sell to or to permit the said Mays Oil Company to have any water whatsoever;

That for months after the arrival of deponent upon the said property the necessity for water in the drilling operations then in progress at said well were so imperative and the supply so inadequate that this deponent visited said Stratton Water Company almost daily and on some days three or four different times in the day in order to see that every particle of water that could be coaxed or cajoled from the said company should be put into the pipes of Mays Oil Company for delivery at said well;

That at no time thereafter or prior to the year 1911 was any water piped into the said district by any person or corporation; **[110]**

That the well at the time of deponent's arrival was down about 850 feet and the further work proceeded with increasing difficulty because of the lack

of water; that at no time could deponent secure from said Stratton Water Company sufficient water to keep the casing free in the well, with the result that the said drilling was many times stopped because of the lack of water to keep the casing free; that often it was necessary to stop drilling for several hours at a time because of the lack of water; that the shutting down of drilling in a well of that character, where there is not sufficient water to keep the casing free is very dangerous, and is apt to prevent entirely the further drilling of the well, and there finally came a time at or about the end of the year 1909 when the casing became stuck and the entire hole was lost; that this was prior to any discovery of oil therein in paying quantities;

That the loss of said well was due entirely to the lack of water and that at the time the same was lost it had cost the said company an amount which this deponent believes to be in excess of $10,000; that during all of the said period of time the Stratton Water Company was making efforts to increase its supply of water; that to that end it was sinking or enlarging its wells, installing a compressor and new boilers, and its officers were repeatedly stating to deponent that they would soon have an increased water supply adequate to satisfy the necessities of the said Mays Oil Company, not only for the drill which was then being operated but for the purpose of drilling its other intended wells;

That deponent acting as manager of said company believed said representations and expected that just as soon as the diligent efforts of the said

Stratton Water Company could bring it about, the water company's supply would be increased, and the [111] said water supply of the said Mays Oil Company would be increased through the said Stratton Water Company, to a point where its drilling necessities would be met;

That after the loss of the aforesaid well—the same being the first hole drilled upon the said tract of land—deponent immediately caused a second well to be started; that to that end he retained the boiler in its then position but moved the derrick east a distance of about thirty feet; that the said hole thus started was started on or about the 1st day of January, 1910, and was continued diligently in the same manner and with the same diligence as that which had attended the sinking of the said first well;

That the difficulties with water continued during the year 1910; that as in the case of the said first well, stoppages varying from a few hours to a few days for want of sufficient water occurred; that the said well finally struck oil in paying quantities at a depth of upwards of 3,000 feet; that the work on the said well was proceeded with diligently and without interruption save such as is incidental to all similar work, until oil in paying quantities was struck thereon some time in the year 1912; although both oil and gas were struck in the said well long before the same was developed in paying quantities;

That deponent was anxious at all times to begin boring another well, but did not dare to begin such

work because of the shortage of water, until March, 1911; that by the said time there had been some improvement in the supply of the said Stratton Water Company, brought about in part by the expenditures which the said Stratton Water Company had gone to upon its property, but chiefly because of the fact that said Stratton Water Company **[112]** agreed with deponent, acting in behalf of the Mays Oil Company, that it would shut off the supply of certain customers who had failed to pay their water bills, and would give the additional supply thus secured to the Mays Oil Company. Accordingly, deponent, in behalf of the said company, caused the water-pipe line to be extended to a point near the north line of the south half of the north half of the northeast quarter of said Section 28 near the northeast corner of said section, and began diligently the drilling of said well at the first moment that water could be obtained for the said purpose from the said Stratton Water Company in sufficient quantities, in addition to that already obtained, to make it possible to run two rigs simultaneously; and also, preparatory to further drilling on said northeast quarter, deponent caused a tank to be built near the north line of the said quarter, and extended the said pipe-line to the said tank, and built a return gravity pipe-line to the said derrick; that thereafter the work of drilling the said two wells was proceeded with simultaneously;

That oil was produced in paying quantities in the said second well (being the third hole on which drilling was done) many months before oil was pro-

duced in paying quantities in the said first well; that the said Mays Oil Company let a contract with a drilling firm, whereby said drilling firm was to drill for the Mays Oil Company three wells; that the said drilling company began to sink the first of these additional wells on July 28, 1911, at a point on the south half of the northwest quarter of said Section 28 at the skeleton derrick that had already been erected thereon at the time of the first arrival of deponent on said section in 1909; that the said derrick was actually rigged up, and used in the drilling of said well; **[113]**

That by that time, through the failures of its other customers, or by increasing its water supply, or both, the said Stratton Water Company was enabled to furnish water sufficient to drill two wells simultaneously, although the supply for the said purpose was not entirely sufficient to operate both sets of drilling tools with full satisfaction; that oil in paying quantities was produced in said well No. Three in June, 1912; that the work of sinking the same was proceeded with diligently and without interruption from July, 1911, to the production of oil in paying quantities in June, 1912;

That deponent continued working upon the said properties for said Mays Oil Company and its successors until May, 1914; that during said period of time ten wells, producing oil in paying quantities, were sunk; that there never was a time during the whole period from the date of deponent's arrival in October, 1909, to the time that he ceased to be man-

ager of said properties in May, 1914, when he did not have a string of from one to three sets of tools drilling upon said property;

That deponent was during all of the said period of time personally interested in the shares of stock of the company which employed him, and that he had great personal inducement to proceed with the work of developing the said property as rapidly as the same could be done; that at no time was the company short of funds for the said purpose, and that at all times it had ample credit, and that with one concern alone it had a credit of $100,000 at all times from 1909, to the time that deponent's employment upon said property ceased, and that said development of each of the said properties and each of the said governmental subdivisions thereof was proceeded with as **[114]** rapidly and diligently as was physically possible in view of the water difficulties encountered, and the nature and object of the enterprise; that since deponent's employment upon said property ceased, he has, nevertheless, been financially interested therein, and has visited the said property nearly once a month since that time, to wit: since May 4, 1914; that he has observed the work that has been done upon the said property since May 4, 1914, and has noted that four wells have been sunk since that time and that the work of developing said property is diligently pursued by those now in charge;

That taxes were levied upon all of the said land, and were paid by deponent in behalf of his employers; that the aforesaid possession of said property

was maintained in absolute good faith, and was accompanied during the time deponent was so employed by an expenditure of more than $500,000.

This deponent has had a very wide experience in the drilling of oil wells and knows what is necessary and essential thereto. In addition to a derrick, and the necessary drilling tools, machinery and pipe, the three essentials to drilling a well are labor, power and water; that without either one of the three last-named requisites it would be as impossible to drill such a well as it would be to drill the same without tools or machinery. Labor is no more important than is water. Without a proper supply of water it is not possible to perform such work. In the case of Section 28 we could get all of the essentials for drilling, except an adequate supply of water as hereinabove fully appears.

CHARLES H. SHERMAN.

Subscribed and sworn to before me this 27th day of December, 1915.

ALICE SPENCER,

Notary Public in and for the City and County of San Francisco, State of California. [115]

Affidavit of Louis Titus.

State of California,
City and County of San Francisco,—ss.

Louis Titus, being first duly sworn, deposes and says:

That he is the president of North American Oil Consolidated, a corporation, and has been the presi-

dent of said corporation from the time it was organized in December, 1909, down to the present time.

That North American Oil Consolidated succeeded to the property and interests of a corporation known as the "Hartford Oil Company," and that this affiant was the president of said Hartford Oil Company from the time of its incorporation in May, 1909, down to the date of the dissolution of said corporation sometime in 1910. That said Hartford Oil Company was operating upon Section 16, Township 32 South, Range 23 East, M. D. B. & M., Kern County, California, during the year 1909, and drilling wells thereon; and also on Section 22, same township and range, during the same period of time. That in January, 1910, said operations were taken over by said North American Oil Consolidated and have been conducted thereon ever since, down to the present time. That in February, 1910, said North American Oil Consolidated began operations on Section 26, same township and range; and also upon Section 15, same township and range. That the operations on all the foregoing property included the drilling of a considerable number of wells. That the above sections of land, with the exception of Section 15, were patented sections, the land in Section 22 and Section 26 having been patented by the United States Government to the predecessors in interest of the corporation above mentioned, under placer mining locations.

That beginning in January, 1910, and continuing throughout the year 1910 and a part of 1911, said corporation was operating on Sections 27 and 28,

same township and range. Said Sections [116] 27 and 28 were not patented claims but were held under placer mining locations.

That from the beginning of the operations of said Hartford Oil Company the greatest difficulty was experienced by said company in procuring sufficient water with which to drill its wells. The only sources of water supply available in that portion of the field at that time was one water system owned by H. C. Stratton (which was afterwards turned over to the Stratton Water Company, a corporation); and a second water system belonging to a corporation called the "Chanslor-Canfield Midway Oil Company," which was in fact, owned and operated by the Santa Fe Railroad Company. That this affiant personally made efforts in the beginning to secure water from said Chanslor-Canfield Midway Oil Company but was positively refused, the officers of said company claiming that they had no water to sell, all the water they had being required for their own purposes. That he did succeed in buying water from H. C. Stratton, and the first water was delivered to Hartford Oil Company by said Stratton in May, 1909, and thereafter more or less water was delivered by said Stratton Water Company to the corporation above mentioned for a period of several years. That said source of water supply was very inadequate and inefficient; that there was never more than sufficient water to drill one well at any one time, whereas said corporation very much desired to drill several wells at the same time. That many times operations had to be shut

down because there was no water to operate even one string of tools. That these delays were expensive and costly because of the danger of losing the casing in the hole and because the labor had to be paid for whether the tools were being operated. [117]

That this affiant expostulated with said Stratton and other managers of the said water company, many times over the inadequacy and inefficiency of the service, but said company was totally unable to supply any greater amount of water because their system was insufficient and had no greater capacity.

That thereupon, toward the end of 1909, this affiant despaired of getting water in sufficient quantities from the said Stratton Water Company and began negotiations again with the Chanslor-Canfield Midway Oil Company; and that he finally succeeded in purchasing some water from the said Chanslor-Canfield Midway Oil Company. That said company would make no promise that it would furnish any particular amount of water, but that it would allow us to turn the water on when there was water in the pipes to be had. That this source of supply was also very inefficient and totally inadequate to meet the wants of said corporation, North American Oil Consolidated. Nevertheless, said corporation continued to buy water from both of said water companies during the early part of 1910. That early in 1910, despairing of getting sufficient water from these two water companies, or from any other source that was apparently available, this affiant caused to be constructed a side track along

the railroad, running across a portion of the property of the North American Oil Consolidated on Section 15; and thereupon for a period of several months, beginning with September, 1910, water was shipped by trainload to said North American Oil Consolidated, from Bakersfield to said side track on Section 15, and from there was pumped to Section 22, Section 16 and Section 26. That said operation required the laying of long strings of pipe and the installing of expensive pumping machinery. That this method of procuring water proved to be so expensive that it was not practicable and was finally abandoned in April, 1911. **[118]**

That Section 28 is in the same general locality as the sections heretofore mentioned as being operated by North American Oil Consolidated; that the said general conditions as to water existed on Section 28 as existed on the sections hereinbefore mentioned.

It is, of course, true that water could have been hauled in wagons for many miles and across a country havnig no roads. It would have been a physical possibility to have drilled wells in this manner, but as a practical commercial proposition it was absolutely prohibitive and the cost would have been so colossal that no well could have been drilled with any profit no matter how great the returns from such a well. The whole country in which Section 28 is located is an arid country, almost desert in character, with practically no vegetation; and no surface **[119]** water and no well water could be had except at extraordinarily great depth. During 1909, and until the latter part of 1910, it was not

known nor even supposed that any water could be procured from wells at any depth whatever. All of the surrounding drilling at that time had tended to prove that no water in any quantities could be obtained from such wells, and it was only after 1910 it was found that, by drilling very deep wells and installing expensive pumping machinery, water in commercial quantities could be lifted from some wells in that vicinity; all water from such wells being salty and totally unfit for domestic purposes, but could be used for the purpose of drilling wells.

That in drilling an oil well large quantities of water must be constantly used, and any stoppage in the water supply while a well is being drilled is almost sure to be disastrous, frequently resulting in freezing of the casing, thus making an additional expense of several thousand dollars; and, moreover, such lack of water very frequently results in absolutely ruining the well, necessitating an abandonment of that particular well and beginning all over on a new well.

That during the early part of 1910, this affiant, seeing that there would be great difficulty in procuring any adequate water supply for drilling in said locality, together with certain of his associates, employed engineers and began plans for bringing in a source of water supply that would be adequate to meet the requirements, (at least in some small degree) of said locality. That in pursuance of this employment, said engineers caused certain surveys to be made from Pine Canyon in the Santa Barbara range of mountains for a distance of over forty miles to said Midway field; and complete plans and specifications were

made for the laying of a pipe-line for said distance. Bids were actually procured for the building of said pipe-line upon [120] said specifications, whereupon it was found that the cost of building said pipeline would be prohibitive and would be much greater than any possible return from the same would warrant.

That this affiant and his associates spent altogether approximately Ten Thousand Dollars ($10,000) in making said surveys and in endeavoring to find an adequate source of water supply. That this expense was incurred beginning in the very early part of 1910, down to the beginning of 1911. That at all the times mentioned in this affidavit this affiant was acquainted with the owners of Section 28 involved in this action. That he knew of the difficulties the owners of Section 28 were having in procuring water at all times beginning with the middle of 1909, down to the end of 1910. That as a practical commercial proposition it was impossible to have procured water for *Section for* purposes of drilling at any earlier time that the same was actually procured. That he was thoroughly familiar with all possible sources of water supply during 1909 and 1910 for said locality; and that this affiant does not believe that by any degree of diligence, or any expenditure within the bounds of reason, any supply of water sufficient for drilling purposes would have been procured in any manner for Section 28 at any earlier period of time than the same was actually procured.

That this affiant is president of Consolidated Mutual Oil Company, a corporation; and said corporation, together with its predecessors in interest, has

been in the actual and notorious possession of said Section 28, and working the same, to the knowledge of this affiant, for more than six years prior to the commencement of this action.

That the said Consolidated Mutual Oil Company acquired and entered into possession of said properties in the month of February, 1914, and from that time forward this deponent has [121] been the president of said corporation and has had the active management of its affairs;

That at the time that the Consolidated Mutual Oil Company took possession of said Section 28, as aforesaid, there were situate on the said section six completed wells in which oil had been discovered in paying quantities and there were two wells upon which drilling had been started, and which had been partially drilled;

That since the said corporation acquired the said properties it has erected upon the said properties elaborate improvements and drilled three new wells, and has also proceeded with the drilling work that was in progress at the time that the said properties were acquired;

That the said corporation has during the said period laid out and expended in improvements upon said property, and in drilling wells and in exploration and development work, a sum in excess of $150,000; and that the improvements now upon the said property are of a value in excess of $150,000;

That the occupation of the said Section 28 by the said corporation, and its predecessors in interest, were and have been at all times open, notorious, and

were at all times actually known to the Land Department of the United States Government, and that whatever activities in the way of development and improvement of the said property have taken place were with the full knowledge of the officers and agents of the Land Department of the United States. That during all of the said period of time the said corporation has given to the agents of the Land Department free access to its books and records of all kinds, and the said United States Government has at all times during the said period had actual reports and knowledge of the improvements that the said corporation was making upon said property, and has had access to the books and papers of said corporation [122] showing the amount of oil that it had extracted and was extracting, and showing the contractual obligations which said corporation was under in the matter of its equipment and the disposition of its oil supply;

That during all of the said time the plaintiff through the officers and agents if its Land Department has had actual knowledge that the defendant, Consolidated Mutual Oil Company, was in possession of the said property under a claim of right, and it has during all of said period of time and until the filing of this suit stood by and knowingly permitted the said defendant corporation, without objection, to make the aforesaid expenditures of money and to extract oils from said properties and to incur obligations in and about the development of said property, and to develop the said property to its present condition and to extract therefrom the very oil the value of which

it is here seeking to recover;

That deponent is informed and believes, and on such information and belief avers, that similarly with full knowledge of the facts concerning the location and possession and the work that had been done upon the said Section 28 on and prior to the 27th day of September, 1909, plaintiff stood by and knowingly permitted the predecessors in interest of the said Consolidated Mutual Oil Company to remain in undisputed possession of the said premises and to expend, in work and labor tending to the development of oil on said property, upwards of $200,000. That the money so expended had been expended in large part in developing the identical wells upon the said property which were producing oil at the time that the said Consolidated Mutual Oil Company purchased the said property, and that the purchase of the said property by the said corporation was largely induced by the said developments. That because of the said development the said corporation has paid to its predecessors in interest more than $500,000. [123]

That deponent as president of said corporation has made a rigid and careful study of the most economical methods of handling the business conducted by the said corporation.

That the said business is one which deals with large quantities of oil and with a very great number of items of expense, and that the difference of a very few mills or cents upon each item involved results in great aggregate loss or gain to the said corporation; that the business is one requiring for its successful conduct careful training and years of experience and

calls for all of the energy and painstaking perserverence of self interest in order that such business shall be economically and advantageously administered; and in order that its wells may continue to produce. That without such an administration of said corporation's business great and irreparable loss will result to the said business and to the said corporation and its stockholders;

That men trained in the said business and who have the time at their command, and are in a situation to devote the necessary energy to conduct such a business, would be very difficult to find; that deponent in his own experience has found it impossible to himself select or procure thoroughly satisfactory assistants in such work, regardless of the amount that he has been prepared to pay therefor. Deponent verily believes that it is most improbable that this court could find a person to act as receiver of said business who would administer the said business without serious and irreparable loss and detriment to the said corporation and its stockholders.

That in the judgment of this deponent a receiver cannot be appointed to take charge of and operate the said properties without irreparable loss and injury to the said corporation; [124]

That the said corporation is fully able to respond in damages for any detriment the plaintiff may suffer pending this litigation.

LOUIS TITUS.

Subscribed and sworn to before me this 28th day of December, 1915.

C. B. SESSIONS,

Notary Public in and for the City and County of San Francisco, State of California. [125]

Affidavit of E. W. Kay.

State of California,

City and County of San Francisco.—ss.

E. W. Kay, being first duly sworn, deposes:

That he was during all of the time hereinafter mentioned manager of the Stratton Water Company; that he is not a party to nor in anywise interested in the above-entitled action.

That from August, 1909 to July, 1910, the Stratton Water Company was engaged in the business of producing and selling water in the North Midway Field; that during said time, it had three producing wells; that two of said wells were of little value, and all the water they would produce in 24 hours could be pumped out in an hour and a half; that during said period of time, Stratton Water Company at no time, operating its wells for full capacity during twenty-four hours, could produce in excess of 3,300 barrels of water.

That during said period of time the Stratton Water Company had application from Oil Companies desiring water for 16,000 to 20,000 barrels a day; that Stratton Water Company actually entered into arrangements to supply from sixteen to twenty oil companies with water at from seven to nine cents a barrel; that the requirements of these companies were for not less than 7,500 barrels a day for current

use, and it was necessary in the interests of due caution that each company should have from 700 to 1,000 barrels of water on hand to hold down heaving sands which would destroy the well; that in the endeavor to supply the requirements of its companies with which it had contracts, and which companies needed 7,500 barrels a day with the 3,300 barrels total output of the Stratton Water Company, it was the policy of the company to divide this water up as equally and equitably as possible; **[126]**

That in pursuance of this policy, whenever one well got into serious trouble and was in urgent need of a large amount of water, it was customary to shut off the water supply of the other companies and supply the necessities of the company that was in trouble;

That during said period of time, one of the companies which it supplied with water was the Mays Oil Company; that this company was supplied through a two-inch pipe-line which was built by the Mays Oil Company, and ran for a distance of about three and a half miles; that at no time could the Stratton Water Company, in view of its contracts, have furnished the Mays Oil Company with enough water to run more than one well; that it was the policy of the Stratton Water Company never to supply its customers with more than enough water to run one well; that the well of the Mays Oil Company was often shut down on account of lack of water, and that said company lost a string of casing and finally lost the well, and had to start a new one by reason of failure of water supply;

That during this period of time, there was no other water supply in the Midway Field, except the water that was brought in by the Chanslor-Canfield Midway Oil Company; that the Chan*selor*-Canfield Midway Oil Company had only enough water for its own use and a few immediate favored neighbors;

That the Stratton Water Company, during this period of time, attempted to increase their supply of water without any material result;

That representatives of the Mays Oil Company, during this period, visited affiant from two to eight times a day, urging affiant to maintain a steady supply of water at the drilling well, and to give them water for the other wells; that from the location of the water company's property, it was possible for **[127]** affiant to see the other wells, and that on many occasions when water was shut off from the well for the purpose of aiding some other property that was in difficulties, affiant could see the superintendent of the shut-down property getting into his conveyance to visit affiant and that thereupon affiant would turn the water into the line of that property, and thus satisfy the superintendent when he arrived, and as soon as the superintendent left, he would shut off the water again, so that by the time the superintendent returned to his property they would be without water;

That affiant does not now recall whether the operators of Section 2, Township 32 South, Range 23 East, M. D. *M.* & M. applied to the Stratton Water Company for water, but had they applied, it would not have been provided, as there was not sufficient water

to fill their engagements that had already been made; that it was practically impossible to haul water in wagons to the Mays Oil Company on account of the bad grade, which would have *titled* the water out of the wagons;

Affiant further states that when he first started operations in the Midway Field, it took three and a half days to make twelve and a half miles with teams loaded with lumber; that in hauling water, it cost fifty-five cents a barrel to haul the water, and the mules would drink half the water that was being hauled while they were getting it there.

E. W. KAY.

Subscribed and sworn to before me this 17th day of December, 1915.

FLORA HILL,

Notary Public in and for the City and County of San Francisco. [128]

Affidavit of Louis Titus, December 21, 1915.

State of California,

City and County of San Francisco,—ss.

Louis Titus, being first duly sworn, deposes and says:

That he is the President of the Consolidated Mutual Oil Company; that prior to the commencement of the above-entitled action, an application for patent was made to the Government of the United States for the quarter-section of land involved in said suit, and applicant made a final entry thereon and paid to the Government of the United States the sum of $2.50 per acre therefor, for which a receipt was issued, and is

still uncancelled, and that said application for patent is still pending.

That the Consolidated Mutual Oil Company in good faith and for a valuable consideration, and believing that their predecessors in interest were diligently at work at the time of the withdrawal of September 27, 1909, and that they diligently continued at work until a discovery of oil was made, and believing that the location and title to said land was in all respects valid and having no notice or knowledge of any kind or character that there were any defects in said title, purchased a portion of said land, together with other land, and paid therefor a sum exceeding $100,000 and since said time has expended thereon a sum in excess of $100,000 in improving said land.

Affiant is informed and believes, and on that ground alleges, that the agents of the plaintiff have had said land under investigation, and in 1910 plaintiff had full knowledge of all matters alleged in the bill of complaint, but that no notice was given or claim made by the Government of the United States that said claim was not a valid claim.

LOUIS TITUS.

Subscribed and sworn to before me this 21st day of December, 1915.

JAMES L. ACH,

Notary Public in and for the City and County of San Francisco, State of California. [129]

Affidavit of Colin C. Rae.

State of California,
County of Los Angeles,—ss.

Colin C. Rae, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years; that his postoffice address is 1003 Higgins Building, in the city of Los Angeles, county and State aforesaid.

That he has investigated the conditions existing in the Midway Oil Fields, so called, in Kern County, from September 1, 1909, to and including July 2d, 1910, with reference to facilities for the drilling of oil wells, and affiant states that from his examination of the conditions existing at said time development was retarded and rendered costly and uncertain by lack of a proper water supply.

That on September 27th, 1909, the only companies selling water in the Midway Oil Fields were the Chanslor-Canfield Midway Oil Company and the Stratton Water Company.

That in 1905 the Chanslor-Canfield Midway Oil Company installed a 3-inch water-line from some water wells on Section 23–30–31, which is in the Santa Maria Valley, about 3 miles west of McKittrick, and ran the line along the foothills to Section 17–31–22, and then to what is known as the 25 Hill District in the Midway field. The wells were shallow, being only 70 or 80 feet deep and were dug in the earth.

That the Chanslor-Canfield Midway Oil Company,

in addition to supplying water for its own development, sold water to various consumers whose land was contiguous to said water-pipe line.

That the quantity of water called for was greater than the supply, and therefore, in the latter part of 1908 the Chanslor-Canfield [130] Company commenced the installation of a 6-inch pipe-line to take the place of the old 3-inch line. This line was finished in 1909, and was about 25 miles in length. When the line was completed it was found that the water wells would not produce sufficient water to supply the demand, and consequently the wells were deepened but with no better results.

That in April, 1909, the drilling of new wells was commenced and work continuously carried on until October, 1909, during which time 8 wells were completed, and with more or less success as to production of water.

That when said wells were completed it was found that the pump used to force the water through the 6-inch water-line was inadequate and a Snow pump was ordered from the East. This pump was put in operation in the latter part of August, 1909, but proved to be too small, and another *until* was ordered, but was not put in operation until about October, 1910, and until the new unit was installed the capacity of the line was not materially greater than the old 3-inch line which had been in use prior to building the new 6-inch line.

That in addition to the new water wells, pumps and lines, it was necessary to install several 2,000 barrel tanks, which was done at various points in the field,

as well as 3 100 h. p. boilers and several Luitweiler pumps, and that the cost of said water system was in the neighborhood of $200,000.00.

That the number of consumers served by said Chanslor-Canfield Midway Oil Company was at no time in excess of 30, and during the period from September, 1909, to July 2d, 1910, there was constant trouble, and at many times an insufficient quantity of water for development purposes. [131]

That by reason of the insufficiency and uncertainty of the water supply, the development of oil wells was retarded.

That the Chanslor-Canfield Midway Oil Company distinctly stipulated with its consumers as to said uncertainty and assumed no liability in any way.

That at all times during said period there was a far greater demand for water than the Chanslor-Canfield Midway Oil Company could supply, and that said company actually had, at all times herein mentioned, a waiting list of individuals and companies who desired water for development purposes.

That the Stratton Water Company secured water from a well originally sunk for oil, in the northeast corner of Section 7, Township 32 South, Range 27 East.

That a 3-inch pipe-line, five miles in length from said well was run in a general southeasterly direction along the foot-hills to what is known as the 25 Hill District, in the Midway Field.

That the water sold by this company was not, as a matter of fact, fit for use in boilers.

That said company could not supply the demand

made upon it for water.

That the supply was uncertain and that development was actually stopped on several sections or portions thereof because of failure of water supply.

That by reason of the inability to obtain water in the Midway Field some of the larger companies put in private water systems at a large expenditure of money.

That in 1908, the Standard Oil Company investigated the various sources of water supply in the Midway Field, but could not obtain water for the operation of its pump station for development purposes. [132]

That said Standard Oil Company in 1908 entered into a contract for the sinking of a water well on Section 1, Township 32 South, Range 23 East, M. D. B. & M.

That a well was sunk, but said company was not successful in developing a water supply from said well.

That said company being unable to secure water for the operation of its oil-pipe line and for the development of its properties, developed a water supply at Rio Bravo, a distance of 23 miles from Taft, Kern County, California, and brought water into the Midway Field through the said oil-pipe line.

That oil was pumped a few days to Rio Bravo, the line cleared and water pumped back from Rio Bravo to tanks in the Midway Field.

That this water was the only water used by Standard Oil Company for development work in Midway Fields; that this mode of supplying water was used

by said company until 1910, when a separate water-pipe line was constructed from Rio Bravo to the Midway Field.

That said company did not supply water to any other person or company, and based its refusal so to do on the ground that it did not have water enough for its own development and use.

That in order to carry on development work in the early part of 1909 the Honolulu Oil Company by reason of said universal scarcity of water, investigated possible sources of supply, and drilled a well for the purpose of securing a water supply near Buena Vista Lake.

That said company was not successful in securing suitable water for its said needs, and entered into negotiations with the Buena Vista Reservoir Association, and through a private arrangement secured water from said Buena Vista Lake, which was conveyed by means of a water-pipe line to the properties of the said Honolulu Oil Company in the Midway Field. [133]

That said water pipe line system was constructed at a cost of many thousands of dollars, and the Honolulu Oil Company did not furnish any person or company with water, giving as a reason the fact that the said water-pipe line would not supply any more than enough water for the use of said company.

That by reason of the inability of operators to secure water for development purposes and their great need therefor, a co-operative organization, known as the Kern Midway Water Company, was organ-

ized, and brought water in to said Midway Field in tank cars;

That at no time was the amount of water secured in this manner sufficient for the needs of the said organization.

That cars for said purpose were secured with great difficulty and that said supply was unreliable.

COLIN C. RAE.

Subscribed and sworn to before me this 16th day of December, 1915.

BERTHA L. MARTIN,
Notary Public in and for the County of Los Angeles, State of California. [134]

Affidavit of C. H. Sherman, December 13, 1915.

State of California,
City and County of
San Francisco,—ss.

C. H. Sherman, being first duly sworn, deposes:

That he is and was at all times herein mentioned over the age of twenty-one years;

That in the early part of October, 1909, he entered the employ of the Mays Oil Company as manager, and was on and about Section 28, Township 31 South, Range 23 East, M. D. B. & M., at all times from thence forward, and up to the month of May, 1914;

That the predecessors in interest of said Mays Oil Company entered into the possession of the Northeast Quarter of said Section 28, Township 31 South, Range 23 East, M. D. B & M., under a mineral location made as provided by law prior to September 27, 1909;

That prior to said date, the derrick was erected on said quarter section for the purpose of drilling for oil, and the work of development on the well was actually commenced prior to September 27, 1909, and thereafter the work tending to discovery of oil was continued diligently by occupants in good faith until oil was discovered in July, 1912, as hereinafter more particularly set out;

That many difficulties were encountered in the actual drilling of said well which the occupants sought diligently and continuously to overcome, but in spite of the continued diligence of the operators delayed the completion of the work; that the difficulties referred to arose chiefly in the getting of casing and other materials necessary in drilling a well, and in the shortage of water; that the period from September, 1909, to August, 1910, was a period of great development in the Midway Field, and at the time of the inception of the said work, practically no water was available; [135]

That concurrently with the inception of work on said Northeast Quarter, the occupants were also working on the Northwest Quarter and on the Southwest Quarter of the Section; that the only source of water which was available to the occupants of said land was the water furnished by the Stratton Water Company, whose wells were situated on Section 7, Township 32 South, Range 23 East M. D. B. & M., and in order to get such water, it had been necessary for the Mays Oil Company to run a water-line about five miles in length to the source of the water supply; that the line was two inches in diameter and the total

amount of water which could be obtained from the Stratton Water Company was at no time *time* sufficient to drill more than one well, and that on many occasions the available supply of water was not even sufficient for that purpose, to such an extent that, during the month of August, 1909, the well on the Southwest Quarter was shut down for sixteen days by reason of the inability to get sufficient water to carry on the operations;

That a large and continuous supply of water is absolutely essential for the drilling of oil-wells in the Midway Field, and the failure of the supply of water inevitably results in the sticking of the casing, and thereby in the loss of a string of casing which costs the company anywhere from $3,000 to $6,500, depending on the depth at which it is lost;

That in said well on the Southwest Quarter, by reason of the uncertainty of said water supply, a string of casing was lost, and finally resulted in the entire loss of the hole and necessitated moving the derrick and commencing a new well;

That it is absolutely impossible to start drilling of a well unless a sufficient and continuous supply of water is assured; that during all periods, constant and persistent efforts were made by the Mays Oil Company to secure an adequate supply of [136] water, and as soon as an adequate supply of water was available, the drilling of the wells was pursued continuously and with the greatest diligence;

That during said period of time, affiant was handicapped in his operations by constant failing of the water supply, and called at the headquarters of the

Stratton Water Company three or four times every day, and often during the early hours of the morning in the persistent endeavor to urge said Stratton Water Company to supply the property with sufficient water, but notwithstanding such efforts, it was never possible to drill more than one well on account of the inability of the Stratton Water Company to furnish water;

That during the period up to January 1st, 1909, there was expended in the development of the said land a sum of money exceeding $5,800, and that during the year 1910 there was expended in developing the land a sum of money exceeding $13,100, and thereafter until oil was discovered, a further sum was expended on said land exceeding $26,500; that thereafter there was expended on said land in 1913 the sum of $338,706.46;

That the Northeast Quarter, the Northwest Quarter and the Southwest Quarter of said Section were all located as placer mining claims, and constituted a group of claims lying contiguous and owned by the same persons, and that all labor done on —— of said claims for the discovery of oil tended to the development to determine the oil-bearing character of the contiguous claims; that the wells on said claims were all grouped about the point of contact of said three claims, that is, near the center point of said Section 28; [137]

That during all of the periods herein mentioned, the actual work of drilling a well was continuously and diligently carried on on the Southwest Quarter; that on said three claims, up to December 31, 1909,

there was work done tending to the discovery of oil in all costing in excess of $43,000; that during the year 1910, there was expended on said three claims, tending to the discovery of oil, a sum exceeding $59,000; that during the year 1911, there was expended on said three claims a sum exceeding $90,900;

That the Record ——— Company, by itself, its grantors and those claiming under it, have been in the open, notorious, adverse, and exclusive possession of said Northeast Quarter of said Section for more than five years preceding the commencement of the above-entitled action, and that they were diligently at work in good faith drilling a well for oil on said land between June 26, 1910, and July 2, 1910, and thereafter diligently continued such work until discovery of oil was made.

C. H. SHERMAN.

Subscribed and sworn to before me this 13th day of December, 1915.

[Seal] ANNE F. HASTY,

Notary Public in and for the City and County of San Francisco, State of California. [138]

Order Permitting Withdrawal of Affidavit of C. H. Sherman, etc.

It appearing to the Court that two affidavits of C. H. Sherman have been filed upon motion for the appointment of a receiver in the above-entitled action, one dated the 13th day of December, 1915, and the other the 27th day of December, 1915.

And it further appearing that the first of said affidavits was prepared in the office of A. L. Weil, Esq., attorney for defendant Consolidated Mutual Oil

Company, and that a copy thereof was thereafter submitted to Charles S. Wheeler, Esq., of counsel for said defendant, in order that he should pass upon the same before the same was to be filed; and it appearing that the said Charles S. Wheeler, Esq., in connection with the said Sherman investigated drilling records of the said Mays Oil Company, and said C. H. Sherman thereupon discovered that he had erred in stating that drilling of a well on the Northeast Quarter had started in 1910, and that the correct date should be 1911.

And it appearing that the second affidavit was prepared in the office of the said Charles S. Wheeler, Esq., and that in said affidavit said date was corrected and that it was intended to file said second affidavit and not to file the said first affidavit, but that said first affidavit was inadvertently sent to Los Angeles for filing from the office of said A. L. Weil,, Esq.; and counsel having made the foregoing representations to the Court and having asked the Court for an order permitting them to withdraw the said first affidavit of the said Sherman, and it appearing to the Court that it is proper that the said first affidavit should under the circumstances be withdrawn,

NOW, THEREFORE, IT IS ORDERED that the said first affidavit of said C. H. Sherman may be withdrawn and the same hereby is stricken from the record.

Dated January 18th, 1916.

M. T. DOOLING,
Judge. [139]

Affidavit of C. R. Stevens.

State of California,
County of Los Angeles,—ss.

C. R. Stevens, being first duly sworn, deposes and says:

That he is a citizen of the United States, over the age of twenty-one years; that his postoffice address is 1003 Higgins Building, in the City of Los Angeles, county and State aforesaid;

That from September 1st, 1909, to March 1st, 1910, the oil well supplies sold by the supply houses in Taft, Kern County, California, had increased from approximately $125,000, during the month of September, to approximately $600,000, during February, 1910; that thereafter and up to September 1st, 1910, the approximate sales of oil well supplies by the combined supply houses at Taft exceeded $750,000, per month; that these figures do not include the purchase of lumber in immense quantities for rigs and other building purposes. nor do these figures include direct purchases by large operating companies such as the Standard Oil Company, Associated Oil Company, Union Oil Company, Kern Trading & Oil Company, and other companies purchasing material direct at other points for shipment into the Midway Field;

That the various supply houses, as well as other large companies purchasing direct, experienced great difficulty in securing deliveries of oil well supplies from manufacturers in the East, particularly

of casing and boilers, as said manufacturers had not anticipated the enormous increase in demand;

That because of the enormous increase in demand for oil well supplies, including lumber, during the period hereinbefore mentioned, the railroad companies were unable to expeditiously **[140]** handle freight and as a result there was, particularly during the early part of 1910, congestion of cars at Bakersfield, the railroad companies being unable to clear through to Taft; that during the months of February and March, 1910, there were more than two hundred (200) cars of material congested at Bakersfield awaiting clearance for Taft; that because of the activity in the Midway Field the office force of the Sunset Railway Company at Taft was increased, during the time above mentioned, from two to twenty-six men.

C. R. STEVENS.

Subscribed and sworn to before me, this 16th day of December, 1915.

BERTHA L. MARTIN,
Notary Public in and for the County of Los Angeles, State of California. **[141]**

Order Approving Statement of Evidence.

It appearing to the Court that Notice of Lodgment of Statement of Evidence on Appeal in behalf of appellants Consolidated Mutual Oil Company and J. M. McLeod was given to the solicitors for the plaintiff above named on the 15th day of March, 1916.

And it further appearing that on the 20th day of

March, 1916, said plaintiff served on the solicitors for said appellants a copy of its proposed amendments to said Statement of Evidence, wherein said plaintiff requested that there be included in said Statement of Evidence the affidavit of C. R. Stevens, dated the 16th day of December, 1915, and the affidavit of C. H. Sherman, dated the 13th day of December, 1915.

And it appearing that by order of this Court dated the 18th day of January, 1916, said affidavit of C. H. Sherman was withdrawn and stricken from the record on motion made by counsel for said appellants in open court, but which said motion was made without notice to said plaintiff.

And it being the fact that the Court did not treat as in evidence or consider the said affidavit so stricken out, in making the interlocutory order appointing a receiver, but counsel for appellants consenting to the insertion of said affidavit so stricken, if accompanied by the foregoing recitals, and the plaintiff consenting,

NOW, THEREFORE, the said proposed amendments of plaintiff are allowed and said affidavits of C. R. Stevens and C. H. Sherman, together with the Order Permitting Withdrawal **[142]** of Affidavit of C. H. Sherman, shall be included in said Statement of Evidence; and the said statement as amended being found to be full, true, and correct, the same is hereby approved.

Dated March 29, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: No. A–41—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company et al., Defendants. Statement of Evidence to be Included in Transcript on Appeal. Lodged Mar. 16, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Filed Apr. 1, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. U. T. Clotfelter, A. L. Weil, Charles S. Wheeler and John F. Bowie, Attorneys for Defendant Consolidated Mutual Oil Co. Union Trust Building, San Francisco. Due Service and Receipt of a copy of the Within Statement of Evidence and Amendments this 20th day of March, 1916, is hereby admitted. A. E. Campbell, Attorney for Plff. **[143]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY et al.,

Defendants.

Stipulation on Severance.

WHEREAS, a judgment or order has been made and entered appointing a receiver in the above-entitled action; and,

WHEREAS, the defendants Consolidated Mutual Oil Company and J. M. McLeod desire and intend to appeal therefrom; and,

WHEREAS, the defendants Record Oil Company, Associated Oil Company, Standard Oil Company, and General Petroleum Company do not desire or intend to appeal from such order; and,

WHEREAS, under such circumstances it is proper that an order of severance be made permitting the said defendants Consolidated Mutual Oil Company and J. M. McLeod to prosecute their appeals without joining the other defendants,

NOW, THEREFORE, IT IS HEREBY STIPULATED that such an order may be made; and it is further stipulated that notice to appear on the application for order allowing appeal be, and the same is hereby waived.

A. L. WEIL,
U. T. COLTFELTER, and
CHARLES S. WHEELER and
JOHN F. BOWIE,
Attorneys for Defendant Consolidated Mutual Oil Company.

OSCAR LAWLER,
P. W.,
Attorney for Defendant, J. M. McLeod. [144]

OSCAR SUTRO and
PILLSBURY, MADISON & SUTRO,
Attorneys for Defendant Standard Oil Company.

OSCAR LAWLER and
U. T. CLOTFELTER,
Attorneys for Defendant Record Oil Company.

EDMUND TAUSZKY,

Attorney for Associated Oil Company, Defendant Above-named.

A. L. WEIL,

Attorney for Defendant General Petroleum Company.

Order for Severance.

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that Consolidated Mutual Oil Company and J. M. McLeod, defendants above-named, be allowed to prosecute their appeal without joining the other defendants.

Dated March 3, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: Original. No. A–41—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company, et al., Defendants. Stipulation on Severance. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles S. Wheeler, Attorney for Defendant Consolidated Mutual Oil Co., Union Trust Building, San Francisco. **[145]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Petition for Appeal and Order Allowing Appeal.

To the Honorable Court Above-entitled:

Consolidated Mutual Oil Company, a corporation, and J. M. McLeod, defendants in the above-entitled action, considering themselves aggrieved by the order made in the above-entitled cause on the 3d day of February, 1916, by which said order a receiver was appointed, said order being an interlocutory order appointing a receiver, hereby appealed from said decree or order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their Assignment of Errors filed herewith, and pray that their appeal may be allowed,

and that a transcript of the record, proceedings and papers upon which such decree was made and entered as aforesaid, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order **[146]** touching the security to be required to perfect their appeal be made.

OSCAR LAWLER,
P. W.,
Solicitor for Defendant J. M. McLeod.
CHARLES S. WHEELER and
JOHN F. BOWIE,
P. W.,
A. L. WEIL,
P. W.,
U. T. CLOTFELTER,
P. W.,
Solicitors for Defendant Consolidated Mutual Oil Company.

Order Allowing Appeal.

The foregoing petition for appeal is hereby granted and allowed, and the bond on appeal to be given on behalf of the above-named appellants is hereby fixed at $500 to be conditioned according to law.

Dated March 3, 1916.

M. T. DOOLING,
Judge.

Due service and receipt of a copy of the within

Petition for Appeal this 3d day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for Plaintiff.

[Endorsed]: Original. No. A–41—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company, et al., Defendants. Petition for Appeal and Order Allowing Appeal. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, A. L. Weil, Charles S. Wheeler and John F. Bowie, Attorneys for Defendant Consolidated Mutual Oil Co., Union Trust Building, San Francisco. **[147]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN

OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Assignment of Errors.

Now comes the defendants Consolidated Mutual Oil Company and J. M. McLeod, by their solicitors A. L. Weil, U. T. Clotfelter, and Charles S. Wheeler and John F. Bowie, Esq., and Oscar Lawler, Esq., and aver that the interlocutory decree entered in the above-entitled action on the 3d day of February, 1916, to wit, the interlocutory decree appointing a receiver, is erroneous and unjust to the said defendants, and file with their petition for appeal from said decree the following Assignment of Errors, and specifiy that said decree is erroneous in each and every of the following particulars, viz:

I. The District Court of the United States, for the Southern District of California, erred in appointing a receiver upon the pleadings, evidence and proofs before the Court.

II. The District Court of the United States, for the Southern District of California, erred in appointing a receiver in this action, for the reason that no right to the possession of the real property involved is shown to be in plaintiff, and plaintiff **[148]** did not show any probability that plaintiff was entitled to or would or could recover said real property or the possession thereof, and that the appointment of a receiver herein under the circumstances appearing is

not in conformity with the rules and principles of equity.

III. The District Court of the United States, for the Southern District of California, erred in appointing a receiver for the reason that the evidence before the Court shows the fact to be that the land in controversy was on the 27th day of September, 1909, covered by a placer mining location or claim, which location or claim belonged on said date to the defendant McLeod; that the said location or claim was on said 27th day of September, 1909, an existing valid location or claim within the meaning of the President's withdrawal order of said date; that on said 27th day of September, 1909, the said McLeod, by himself and his lessees was in the actual, exclusive and peaceable possession of the whole of said location or claim, and by himself and his lessees was on said day diligently engaged in the prosecution of work leading to a discovery of oil or gas on said location or claim; that said work was at all times thereafter duly and diligently prosecuted, and resulted in the discovery of both oil and gas on said claim or location, thereby perfecting the same as a mining claim; that said McLeod is the owner of said perfected location and that defendant Consolidated Mutual Oil Company was in possession of a part thereof under a valid lease from the said McLeod; that plaintiff is without any equitable right or title whatever to the said land, and the appointment of a receiver under the circumstances is not conformable to the practice and rules of equity.

IV. The District Court of the United States, for the Southern District of California, erred in appointing a receiver, for the reason that the evidence before the Court makes it clear [149] that on the 27th day of September, 1909, the defendant McLeod, by himself and his lessees, was the *bona fide* occupant and claimant of the land in controversy; that said land was and is oil or gas bearing land; that the said McLeod by himself and his lessees was in diligent prosecution of work leading to discovery of oil or gas on said quarter section of land; that thereafter said McLeod, by himself and his lessees, continued in diligent prosecution of said work until gas and oil were discovered thereon, and that oil and gas were discovered thereon long prior to the commencement of this action, and that the said McLeod, by himself and his lessees, has ever since continued to be such occupant and claimant and has continued in diligent prosecution of like work thereon; that the plaintiff has no equitable right or claim whatsoever in or to said property and that the appointment of a Receiver under the circumstances is not in conformity with the rules and practice of equity.

V. The District Court of the United States for the Southern District of California, erred in treating the complaint as an affidavit and in considering the alleged facts therein set forth as evidence of a probable or any right in plaintiff, for the reason that said complaint was not so verified that the same could be used for such purpose, inasmuch as it appears that the affiant had no personal knowledge of any

facts alleged, which facts if true, would tend to destroy the validity of the titles, rights, interests or claims of these defendants in and to said land, but that such allegations are mere hearsay based upon the statements and examinations and affidavits of third persons.

WHEREFORE, appellants pray that said interlocutory decree be reversed, and that said District Court for the Southern District of California, Northern Division, be ordered to enter a **[150]** decree reversing the decision of the lower court in said action.

OSCAR LAWLER,
P. W.
Solicitor for Defendant and Appellant J. M. McLeod.

A. L. WEIL,
P. W.
U. T. CLOTFELTER,
P. W.
CHARLES S. WHEELER and
JOHN F. BOWIE,
Solicitors for Defendant and Appellant Consolidated Mutual Oil Company.

[Endorsed]: Due service and receipt of a copy of the within Assignment of Errors, this 3d day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for Plaintiff.

Original. No. A–41—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company, et al., Defendants. Assignment of Errors. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, A. L. Weil, and Charles S. Wheeler, John F. Bowie, Attorneys for Defendant, Consolidated Mutual Oil Co., Union Trust Building, San Francisco. [151]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Massachusetts Bonding and Insurance Company, as surety, is held and firmly

bound unto United States of America in the sum of Five hundred and no/100 ($500) Dollars, lawful money of the United States, to be paid to said United States of America, to which payment, well and truly to be made, we bind ourselves, and our successors, by these presents.

Sealed with our seals and dated this 3d day of March, 1916.

WHEREAS, the above mentioned Consolidated Mutual Oil Company and J. M. McLeod have obtained an appeal to the Circuit Court of Appeals of the United States to correct or reverse the order or decree of the District Court of the United States, for the Southern District of California, Northern Division, in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Consolidated Mutual Oil Company and J. M. McLeod shall prosecute their said appeal to effect, and answer [152] all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

MASSACHUSETTS BONDING AND INSURANCE COMPANY. [Seal]
By FRANK (?) M. HALL,
S. M. PALMER,
Attorneys in Fact.

The within bond is approved both as to sufficiency and form this 3 day of March, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: No. A–41. In the United States District Court for the Northern District of California U. S. of America, Plaintiff, vs. Record Oil Company et al., Defendant. Bond on Appeal. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles S. Wheeler, Attorney for ——— Union Trust Building, San Francisco. [153]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Praecipe for Transcript on Appeal.

To the Clerk of the Above-entitled Court.

Please make up, print, and issue in the above-entitled cause a certified transcript of the record, upon an appeal allowed in this cause, to the Circuit Court of Appeals of the United States, for the Ninth

Circuit, sitting at San Francisco, California; the said transcript to include the following:

Bill of Complaint;

Answer of Defendant Consolidated Mutual Oil Company;

Answer of Defendant J. M. McLeod;

Notice of Motion for Receiver and Restraining Order;

Order Directing the Appointment of a Receiver; together with opinions in cases A–2 and A–38 referred to therein;

Order Appointing Receiver;

Petition for Appeal; Order Allowing Appeal;

Assignment of Errors; [154]

Bond on Appeal;

Citation;

Stipulation on Severance;

Statement of Evidence on Appeal;

Notice of Lodgment of Statement of Evidence;

Praecipe for Transcript on Appeal.

You will please transmit to the Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, the said record when prepared, together with the original citation on appeal.

OSCAR LAWLER,

Solicitor for Defendant and Appellant, J. M. McLeod.

U. T. CLOTFELTER,
A. L. WEIL,
CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Defendant and Appellant Consolidated Mutual Oil Company.

Due service and receipt of a copy of the within Praecipe for Transcript this 15th day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for Plaintiff.

[Endorsed]: No. A–41—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company, et al., Defendants. Praecipe for Transcript on Appeal. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, A. L. Weil, Charles S. Wheeler, and John F. Bowie, Attorneys for Defendant, Consolidated Mutual Oil Co., Union Trust Building, San Francisco. **[155]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–41—IN EQUITY.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERI-

CAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Praecipe for Additional Portions of the Record to be Incorporated into the Transcript on Appeal.

To the Clerk of the Above-entitled Court:

Please incorporate into the transcript of the record upon the appeal allowed in this cause to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, the following in addition to those portions of the record already requested by the solicitors for the defendants and appellants, to wit:

The order allowing to plaintiff to submit its motion for receiver and restraining order upon the verified pleadings and affidavits.

You will please transmit to the Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, the portion of the record herein indicated, at the same time and in the same manner as you transmit the portions of the record indicated by the praecipe heretofore [156] filed by the Solicitors for defendants and appellants.

Dated March 18, 1916.

E. J. JUSTICE,
ALBERT SCHOONOVER,
FRANK HALL,
A. E. CAMPBELL,

Solicitors for the United States of America, Plaintiff and Appellee.

Due service and receipt of a copy of the within Praecipe for Additional Portions of the Record to be Incorporated into the Transcript on Appeal, this 20th day of March, 1916, is hereby admitted.

U. T. CLOTFELTER,
A. L. WEIL,
CHARLES S. WHEELER and
JOHN F. BOWIE,
OSCAR LAWLER,
Solicitors for the Defendants and Appellants.

[Endorsed]: No. A–41. In the District Court of the United States for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company, Consolidated Mutual Oil Company, et al., Defendants. Praecipe for Additional Portions of the Record to be Incorporated into the Transcript on Appeal. Filed Mar. 22, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[157]**

In the District Court of the United States, in and for the Southern District of California, Northern Division.

No. A–41—EQUITY.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. Mc-

LEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and fifty-seven (157) typewritten pages, numbered from 1 to 157, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Answer of defendant, Consolidated Mutual Oil Company, Answer of defendant, J. M. McLeod, Notices of Motion for Receiver and Restraining Order, Order Submitting Motion on Affidavits, Order Submitting Motion on Verified Pleadings, etc., Order Directing Appointment of Receiver, Order Appointing Receiver, Notice of Lodgment of Statement of Evidence, Statement of Evidence on Appeal, Stipulation on Severance, Petition for Appeal and Order Allowing Appeal, Assignment of Errors, Bond on Appeal, Praecipe for Transcript on Appeal, and Praecipe for Additional Portions of **[158]** Record to be Included in Transcript on Appeal, all the above and therein-above entitled action, and of the Opinion of the Court in case A–2—Equity, referred to in Order directing appointment of receiver in this

cause, and of the Opinion of the Court in case A–38—Equity, referred to in Order directing appointment of receiver in this cause, and that the same together constitute the record on appeal in this cause, as specified in the aforesaid Praecipe for Transcript on Appeal and Praecipe for Additional Portions of Record to be included in Transcript on Appeal, filed in my office on behalf of the appellants by their solicitors of record, and on behalf of the appellees by their solicitors of record, respectively.

I do further certify that the cost of the foregoing record is $83 80/100, the amount whereof has been paid me by Consolidated Mutual Oil Company, a Corporation, and L. M. McLeod, the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Northern Division, this 28th day of April in the year of our Lord one thousand nine hundred and sixteen, and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States for the Southern District of California,
By Leslie S. Colyer,
Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled 4/28/16. L. S. C.] **[159]**

[Endorsed]: No. 2787. United States Circuit Court of Appeals for the Ninth Circuit. Consolidated Mutual Oil Company, a Corporation, and J. M. McLeod, Appellants, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed May 1, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–41.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RECORD OIL COMPANY, et al.,
Defendants.

Stipulation and Order Enlarging Time to May 1, 1916, to File Transcript, etc.

IT IS HEREBY STIPULATED that the appellants herein may have to and including the first day of May, 1916, within which to prepare and file their Transcript on Appeal in the above-entitled proceeding.

Dated April 15th, 1916.

E. J. JUSTICE,
A. E. CAMPBELL,
FRANK HALL,
Solicitors for Plaintiff.

It is so ordered.

WM. W. MORROW,
United States Circuit Judge, Ninth Judicial Circuit.

[Endorsed]: No. A–41. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Record Oil Company, et al., Defendants. Stipulation.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation and Order Under Rule 16 Enlarging Time to May 1, 1916, to File Record thereof and to Docket Case. Filed Apr. 15, 1916. F. D. Monckton Clerk.

In the United States Circuit Court of Appeals, Ninth Judicial Circuit.

RECORD OIL COMPANY, CONSOLIDATED MUTUAL OIL COMPANY, MAYS CONSOLIDATED OIL COMPANY, J. M. McLEOD, LOUIS TITUS, NORTH AMERICAN OIL CONSOLIDATED, STANDARD OIL COMPANY, GENERAL PETROLEUM COMPANY, ASSOCIATED OIL COMPANY and L. B. McMURTRY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Order Extending Time to June 1, 1916, to File Transcript, etc.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellants to docket said cause and file the record thereof, with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the first day of June, 1916.

Dated at Los Angeles, California, March 13, 1916.

M. T. DOOLING,
U. S. District Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Record Oil Company, Consolidated, et al., Appellants, vs. United States of America, Appellees. Order Extending Time to File Record. Filed Mar. 20, 1916. F. D. Monckton, Clerk.

[Endorsed]: No. 2787. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——— to File Record Thereof and to Docket Case. Re-filed May 1, 1916. F. D. Monckton, Clerk.